United States Court of Appeals

for the Second Circuit

APPENDIX

77-1009

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B

P/S

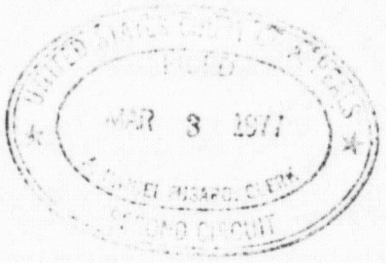
UNITED STATES OF AMERICA,
Appellee

v.

EDWARD V. MASE,
Appellant

On Appeal From The United States District Court For The District Of Connecticut, Honorable Jon O. Newman, District Judge

APPENDIX OF APPELLANT



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PAGINATION AS IN ORIGINAL COPY

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CRIMINAL DOCKET - U.S. District Court

A1

OFFENSE PO [ ] OFFENSE MO [ ] MEANOR Mis [ ] FELONY Fel XX

JUDGE/MAGISTRATE Assigned: 0508 (Disp./Sentence) — 205 District / 03 Office

U.S. vs. MASE, EDWARD V. (LAST, FIRST, MIDDLE)

JUVENILE [ ]

Case Filed: Mo. 7 Day 14

No. of Def's * 2

Jon O. Newman

76 Yr. | N-76-91 Docket No. | 1 Def.

U.S. MAG. CASE NO.

U.S. TITLE/SECTION: 18:894

OFFENSES CHARGED: extortion to collect gambling debt

ORIGINAL COUNTS: 2

SUPERSEDING COUNTS:

BAIL • RELEASE

[ ] Denied; AMT Set; [ ] Fugitive; [X] Pers. Recog.; [ ] PSA

$ 000

Date: 7/21/76

conditions: [ ] 10% Deposit; [ ] Surety Bond; [ ] Collateral; [ ] Bail Not Made; [ ] Status Changed (See Docket); [ ] 3rd Prty Cust; [ ] Other

II. KEY DATES & INTERVALS

1 ARREST or	1 INDICTMENT XX	2 ARRAIGNMENT	3 TRIAL	4 SENTENCE
U.S. Custody Began: 6/22/76	High Risk Date:	7/21/76	Trial Set For: 9/27/76	Disposition of Charges: 11/10/76
Summons Served:	Information [ ]: 7/14/76	1st Plea: " "	Voir Dire [ ]: 9/27/76	12/14/76
First Appearance:	Indict. Waived [ ]	Final Plea:	Trial Began [ ] J [ ] N: 9/30/76	[ ] On All Charges; [ ] On Lesser * Offense(s)
In Charging District:	Superseding [ ] Indict/Info [ ]		Trial Ended: 11/10/76	[ ] Convicted; [ ] Acquitted; [ ] Dismissed; [ ] WOP; [ ] WP; [ ] On Governm't's Motion

[X] NG [ ] G [ ] NOL; [ ] G Plea W/Drawn; [ ] NG [ ] G [ ] NOL

MAGISTRATE

	DATE	INITIAL/NO.
Search Warrant: Issued		
Search Warrant: Return		
Summons: Issued		
Summons: Served		
Arrest Warrant Issued		
COMPLAINT ▶		
OFFENSE (In Complaint)		

INITIAL APPEARANCE DATE ▶

PRELIMINARY EXAMINATION OR [ ] REMOVAL HEARING: Date Scheduled ▶ / Date Held ▶

[ ] WAIVED [ ] NOT WAIVED

[ ] INTERVENING INDICTMENT

INITIAL/NO.:

Tape Number:

OUTCOME:

[ ] DISMISSED

[ ] HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT

[ ] HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst.: Peter C. Dorsey, Paul E. Coffey

ATTORNEYS — Defense [ ] CJA, [ ] Ret'd, [ ] Waived, [ ] Self, [ ] None / Other, [ ] PD, [ ] CD

Jacob D. Zeldes, 333 State Street, Bridgeport Conn.

* Show last names and suffix numbers of other defendants on same indictment/information:

(2) GIANOTTI

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY (a) (b) (c) (d)
7/14/76		Indictment returned andfiled at New Haven. Summons to issue for July 26, 1976 at 10:30 A.M. in New Haven. Zampano, J. m-7/15/76	
7/16/76		Summons issued for July 21, 1976 at 10:30 A. M. in New Haven.	
7/21/76		PLEA: Plea of not guilty entered to Cts. 1 & 2. Case continued on same bond for trial. Notice of Readiness, filed by govt. Demand for Notice of Alibi, filed by govt. Copy of new local Rule handed to counsel. Zampano, J. m-7/21/76.	
" "		Marshal's return showing service, filed: Summons.	
7/23/76		Defendant Data Collection Form, filed by govt.	
7/27		Motion for Bill of Particulars, filed by deft.	
7/27		Motion for Discovery and Inspection, filed by deft.	
7/27		Objection to Demand for Notice of Alibi, filed by deft.	
7/30		Response of U. S. To Defendant Mase's Motion for Bill of Particulars, filed.	
7/30		Response of U.S. To Defendant Mase's Motion for Discovery and Inspection, filed	

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DATE 1976	(DOCUMENT NO.)				
7/30/76	Court Reporter's Sound Recording of Proceedings (Plea) held on July 21, 1976, filed. Gale, R.				
8/19/76	Disclosure to Deft. Edward V. Mase, filed by govt.				
8/25/76	Court Reporter's Notes of Proceedings (Plea) held on July 21, 1976, filed. Gale, R.				
8/26/	Ruling on Pre Trial Motions, filed and entered. Motions for Bill of Particulars and Discovery and Inspection-granted in part and denied in part. Newman, J. m-8/27/76. copies mailed to counsel	3	8/26/76	G	27
8/26	Objection of Deft. Edward V. Mase to Demand for Notice of Alibi endorsed: Objection overruled. See F. R.CR.P. 12.1(d). Newman, J. m-8/27/76. copies mailed to counsel.				
9/2/	Bill of Particulars, filed by govt.				
9/3	Motion for Severance, Motion to Dismiss the Indictment and Motion to Suppress Use of and Return of Property, filed by deft.				
9/8	Marshal's return showing service, filed: Subpoena to Produce.				
9/8	Response of the U.S. to Deft's Motion to Suppress Property, and Response to Deft's Motion for Severance, filed by govt.	3	9/8/76	G	
9/8	Court Reporter's Transcript of Proceedings held on July 12, 1976 before Magistrate Latimer filed. Peterson, R.				
9/13	Response of U.S. To Deft. Mase's Motion to Dismiss, filed by govt.				
9/13	Marshal's return showing service, filed: Subpoena to Produce.				
9/17	Marshal's return showing service, filed: Subpoena to Testify (3) and Subpoena to Produce (1)				
9/23	Marshal's return showing service, filed: Subpoena to testify (1).				
9/27	Notice of Deposition (Stephen J. Slifka) by Deft. Mase, filed.				
" "	Notice of Deposition (Paul Dwyer) by deft. Mase, filed.				
9/28	Appearance of Carter Lalande, Esq. entered for Andrew L Houlding.				
9/28	Motion to Quash Parts of Subpoena Duce Tecum and				

DATE	RECEIPT NUMBER		DATE	RECEIPT NUMBER	C.D. NUMBER

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs MASE, Edward

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Yr. | Docket No. | Def.

DATE 1976	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
9/28 cont'd	Objection to Certain Questions, Memorandum in Support of Motion to Quash and Objection, filed by movant Andrew L. Houlding.				
9/27	On JON's Jury Assignment List: Deft. Gianotti not present. Change of plea anticipated on 9/28/76. Mase case ready #3. Motion to Sever is granted by agreement. Newman, J, m-9/29/76.				
" "	JURY TRIAL COMMENCES: Govt's request to Charge, filed. Copy of Transcript of 6/22/76, filed by govt. Statement of Edward Gianotti, filed for Court's in-camera inspection. Ordered sealed and marked Sealed Document #1. Deft. Mase's Requested Questions on Voir Dire, filed. Deft. moves for an individual voir dire-decision reserved. Atty. Zeldes moves for the admission to the bar of this Court, Atty. Bruce Mann-motion granted and oath administered. 2:20 P.M. 43 jurors present. Court describes case to jury. Three jurors excused for cause. A basic panel of 37 names to be drawn. Govt. allowed 9 challenges and deft. allowed 13 challenges. Twelve jurors and three alternate impanelled. Testimony to begin on Oct. 5, 1976. The jurors will be sworn on that date. 2:45 P.M. Court adjourned in this matter. Newman, J. m-9/29/76.				
9/27	Court Reporter's Notes of Proceedings (JAL) held on 9/27/76, filed, Russell, R.				
9/30	Hearing on Motion to Dismiss the Indictment. Transcript of Proceeding before A.H.L. held on 7/12/76, filed. Motion for a pre-trial order Prohibiting the govt. from Cross examining or interrogating Deft. Mase concerning prior criminal record, Supplemental Motion to Dismiss the Indictment, Brief In Support of Notice to Take Depositions and Brief In Support of Motion to Dismiss, filed. Deft. moves to close hearing-denied. Deft, advises Court he will waive his right to a public trial. Three deft. witnesses sworn and testified. Hearing exs. one thru ten, filed. Deft. moves for a copy of Affidavit of Paul E. Coffey-denied. Decision reserved on pending motions. Affidavit of Paul E. Coffey, filed under seal. Newman, J. m-10/1/76.				
9/30	Marshal's return showing service, filed: Subpoena to Testify and Subpoena to Produce.				

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

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DATE 1976	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
10/4	Motion to Dismiss, or in the Alternative for Other Relief, filed by deft.				
10/5	JURY TRIAL CONTINUES: 10:33 A.M. Court hears counsel on pending motions and offer of proof as to testimony of new witness in motion to dismiss. Motion to Dismiss is denied for the reasons stated in open Court. Affidavit of Paul Coffey to remain sealed. Court rules that June 29, 1976 interview of Gianotti may be turned over to deft. The remaining Gianotti statements to remained sealed subject to inspection by reviewing Court. Court defers ruling on Motion to return seized property. Deft moves to close the hearing. denied. Court Ex. 1, marked for ID. Court hears counsel on Motion to Dismiss filed 10/4/76. Motion for continuance granted, until 10/6/76/ at 10:00 A.M. Deft. request for Individual Voir Dire of jurors denied. 12:10 P.M. 15 jurors present. Oath administered. Court voir dires panel re: publicity. Six jurors respond. 12:17 P.M. to 12:37 P.M. Court conducts individual voir dire of six responding jurors. Deft. orally renews motion to dismiss, to close the hearing and for a mistrial. Motions to dismiss and close hearing denied. Court and counsel discuss possible change of venue. 1:00 P.M. Court excuses jury panel until 10:00 A.M. of 10/6/76. 2:35 P.M. Hearing continues on motion for mistrial. Motion for mistrial granted for the reasons stated in open Court. Court will privately notify the counsel of time and place of next trial. Govt's compliance with earlier ruling over to 10/6/76 at 5:00 P.M. 3:00 P. M. Court adjourned, Newman, J. m-10/6/76.				
10/6	Court Reporter's Notes of Proceedings (Motion) held on 9/30/76, filed. Russell, R.				
10/27	Court Reporter's Notes of Proceedings (trial) held on 10/5/76, filed. Gale, R.				
11/1	Motion to limit the Govt's Peremptory Challenges, Supplemental Motion to Dismiss the Indictment, Brief In Support of Supplemental Motion to Dismiss the Indictment, Further Motion to for Discovery, filed by deft.				
11/1	Motion for Protective Order, filed by deft. and endorsed: Motion denied. Motions, as distinguished from particular documents submitted in support of them should be a matter of public record, except in the most extraordinary circumstances. Newman, J. m-11/1/76 copies mailed to counsel.				

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Interval | Start Date | Adj. | Total

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET U. S. vs MASE, EDWARD

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DATE 1976	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)
11/3	Response of the U.S. to Deft's Motion for Protective Order, Response to Deft's Motion for Further Discovery, Response to Deft's Supplemental Motion to Dismiss the Indictment and Response to Motion to Limit the Govt's Peremptory Challenges, filed.	3	11/3/76	G	
11/2	Ruling On Deft's Further Motion for Discovery, filed and entered. Newman, J. m-11/3/76. copies mailed to Atty. Zeldes and Coffey.				
11/4	Brief of Deft. Mase in Opposition to the Admissibility of Tape Recorded Gianotti Dwyer Telephone Conversation, filed.				
11/5	Additional Discovery by the U. S., filed by govt.				
11/8	HEARING ON THE MOTIONS PENDING: Deft's supplemental requested questions on voir dire, filed. Def't advises court it accepts the option of the Court to return the trial to the New Haven seat of Court and request a closed trial. Def't renews motion for continuance of trial in New Haven. The renewed motion to dismiss is denied for the reasons stated in open Court. Court withdraws option offered to transfer case to New Haven and the motion to transfer is denied. Motion for continuance denied. Def't reviews motion to suppress and return of property decision reserved: Motion to limit Gov't peremptory challenged denied for reasons stated in open Court. Def't request to be heard on motion to suppress Gianotti Dwyer - conversation - decision reserved until point in trial. Def't moves to sequester Gov't witnesses - motion granted.				
"	JURY TRIAL COMMENCES: Oath on voir dire administered 45 jurors respond to roll call; seven jurors absent at the time of roll call; four jurors excused for cause; basic panel of 32 names to be drawn Gov't allowed 7 challenges and defendant allowed 11 challenges. Three jurors excused by Court; Gov't challenges 6 jurors; Def't challenges 11 jurors; Twelve jurors and two alternates impanelled and sworn; Three witnesses sworn and testified on behalf of Gov't. Gov't exhibits 1,4,5,6,8,9, and 10 filed; Exhibits 2, 2(a)(b)(c), 3, 3(a), 5, 6, 7, 8, and 11 marked for identification. Def't moves to strike the testimony of witness Puckett - Motion denied. Court hears counsel regarding objection to the Gianotti - Dwyer transcript and tapes. Def't Mase's request to charge 1-10 filed; Court arranges for U.S. Marshal to have juror transported to Greyhound				

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

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DATE 1976	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY (a) (b) (c) (d)
	Terminal. Court adjourned at 5:13 A.M. Newman, J. M-11/10/76.	
11/9/76	JURY TRIAL CONTINUES: Court advises counsel that Juror #2 is absent and is replaced by Alternate #1; Gov't exhibits 2, 2(b)(c), 3, 3(b), 7 and 11 filed; Two witnesses sworn and testified on behalf of the Gov't; Gov't exhibit 2 is played for the jury and copies of exhibit 2(b) are distributed to the jury; Gov't exhibit 3 is played for the jury and copies of 3(b) are distributed to the jury; defendant's exhibits 501 filed; defendant moves for judgment of acquittal and motion to dismiss; Motions denied; Jury excused until 9:30 A.M. of 11/10/76, jurors to report to jury room at North Courtroom. Court and counsel discuss the request to charge. Court adjourned until 9:30 A.M. Defendant request to charge 11-15 filed. Addendum request to charge #11, filed. Newman, J. m-11/11/76	
11/10	JURY TRIAL CONTINUES: Deft. moves for Judgment of Acquittal as to Ct. 2-denied. 13 jurors present. Deft's Supplemental request to charge #15, filed. Deft. moves for a mistrial-denied. Deft. takes exception to the charge; jury returns to the Courtroom and further charge is given. Deft. takes exception to the second charge, no further charge to be given. Amended Indictment, filed. Exhibits 1, 4 thru 11 and 501 brought to the jury and deliberations begin at 1:15 P.M. Jury returns to Court room and Ex. 3 is played. Jury retires for continued deliberations. Court Ex. 1, marked for ID. Jury returns to Courtroom and schedule alternatives are given. Court Ex. 2 marked for ID. Jury returns to Courtroom and return a verdict of guilty at to Ct. 2. Jury is polled and all answer affirmatively. Motion for Mistrial as to Ct. 1 granted at sidebar. Jury is excused. Court ex. 3 marked for ID. Govt. moves to revoke the bond of the deft. Deft is remanded to the custody of the U.S. Marshal. Sentencing set for 12/6/76. at New Haven. Deft. renews motion for suppression of evidence and return of evidence. on condition that written statement be submitted to Court re: poss. of money the U.S. is to return the funds conficated by close of business Friday. Deft. request a 48 hours stay on the remand order-denied. Court adjourned at 5:50 P.M. Newman, J. m-11/11/76.	
11/16	Deft's Motion for Judgment of Acquittal , or, in the Alternative, For a New Trial, pursuant to Rule 29(c) and Rule 33 of the F.R.Cr.P, filed by deft.	

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UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs MASE, EDWARD

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DATE 1976	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY (a) (b) (c) (d)
11/18	Motion for Judgment of Acquittal or, in the alternative, for a New Trial, pursuant to Rule 29(c) and Rule 33 of the F.R.Cr.P endorsed: Motion denied. Newman, J. m-11/18/76. copies mailed to counsel.	
12/6	DISPOSITION: Motion for a Mistrial, or In the Alternative, other relief, filed by deft. Motion for Mistrial denied. Sentencing is cont'd one week to Dec. 13, 1976. Court directs the Marshal to retain the deft. in Marshal's lock up during business hrs. today and such remaining days this week that are necessary to review the P.S.I. accurately. Newman, J. m-12/6/76.	
12/14	DISPOSITION: Impr, 10 years on Ct. two. Deft. moves for bond to be set on appeal-motion denied. Deft. moves to have place of incarceration designated during the appeal process so that deft. remains in district. Court will request that until the hearing of the appeal, that the place of incarceration be within the district, but will but will leave it to the Attorney General to designate the place within the district. Deft. advised of his right to appeal. Newman, J. m-12/14/76.	
12/15	Judgment and Commitment, filed and entered. Newman, J. m-12/16/76 Two cert. copies handed to U. S. Marshal	

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

EDWARD V. MASE PAUL E. DWYER One Hill Street Branford, Connecticut 06405	:	No. 76 Case No. 45M July 12, 1976

B e f o r e :

HONORABLE ARTHUR LATIMER,

J u d g e .

A p p e a r a n c e s :

For the Government:

PAUL E. COFFEY, ESQ.
Special Attorney
U. S. Department of Justice
450 Main Street
Hartford, Connecticut

For the Defendant:

JACOB D. ZELDES, ESQ.
333 State Street
P. O. Box 1740
Bridgeport, Connecticut 06601

Douglas L. Peterson
Court Reporter

event.

But your suggestins of having the reporter, I think, is very useful because, obviously, it will make a transcript much more easily and immediately available.

All right. That is fine.

Now, just a minor question I had. When Mr. Mase was presented last month, Mr. Trotta appeared briefly, simply for the purpose of presentment. It was not clear what arrangements would be for counsel. I am glad counsel is here. I assume you are acting as retained counsel, and it doesn't seem as yet necessary, in any event, that there ought to be an order of appointment of counsel.

MR. ZELDES: That is correct.

Mr. Mase has retained me.

THE COURT: All right. Very well.

MR. COFFEE: I want to advise the Court at this time that Mr. Mase was arrested onthe 22nd of June by the Federal Bureau of Investigation agents, pursuant to what the Government felt, and still feels, is probable cause. The hearing was set down for today. And I have made a decision this morning that the Government would

inform the Court it would not proceed with the preliminary hearing, even though, as a result of the Government's declination to proceed, obviously, the Court would enter an order saying that no probable cause has been found at the hearing, and complaint dismissed.

And the defendant would be released from bond.

I want to advise the Court and Mr. Zeldes that what the Government's probable cause would be on the record is -- because I don't want the record to reflect that in some way this is simply a tactical decision by the Government to deprive the defendant of the right to determine what the Government's probable cause is.

But it is the decision by the Government not to proceed today because of the concern it has with respect to the victim in this case. And concerns which would arise, were he placed on the stand.

The Government did not anticipate putting Mr. Dwyer, who was the victim in the case, on the stand. But Mr. Zeldes has served a subpoena on Mr. Dwyer, which I saw a copy of this morningk asking for all his records and documents. And,

obviously, what it appears to be, end up trying this case before the Court this afternoon, and we wouldn't be prepared in one day.

The Government's probable cause consists, and would consist, as proved by the Government of a tape recording made on June 22, 1976, of a conversation and telephone conversation between Mr. Mase and Mr. Dwyer of a personal conversation between Mr. Mase and Mr. Dwyer at Mr. Dwyer's residence on June 22nd.

And a telephone conversation between one Edward Gionotti and Mr. Dwyer, which was also recorded on June 22nd, a short time after the arrest of Mr. Mase.

The Government would also ask one of the agents, Mr. Stephen Swift, a special agent of the Federal Bureau of Investigation, what he observed with respect to the victim's demeanor at the time of the conversation with Mr. Mase, to show the victim's state of mind and his demeanor.

I have told Mr. Zeldes that he will be allowed to -- this afternoon -- to Listen to the recordings I have identified. And I have

identified them to him, and the two agents who will testify to the records of the state of mind of the victim.

And I have on hand Agents Swift and Puckett.

I think the record should also agree, and all parties are aware of tomorrow, there are Grand Jury proceedings. And the Government intends to present this case to the Grand Jury for its consideration. And the Government's reason for declining this morning to go forward in this matter is the concern of the victim and his testimony, a concern which was brought to my attention this morning, which I have made an independent judgment in the interest of justice. And a substantial interest in justice not to have the victim put on the stand, and inquired into his knowledge of the case at this time before it is being presented to the Grand Jury.

And I think the best course would be, and I intend to put into the record either into the Magistrate's file or if the case resulted into an indictment into the Court's file of an affidavit stating precisely why the Government

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has declined to go forward today, and has chosen instead to proceed with the Grand Jury. What effect that would have, if any, on the prosecution, I don't know. But for the record this afternoon, the Government declines to go forward and present evidence in support of probable cause at this time.

MR.ZELDES: If your Honor please, just to amplify that statement. Mr. Coffee has indicated prior to today that we would proceed today in the procedural case. Andthis morning, I guess 10:30 or 11 o'clock, he notified me of the position he just announced in Court.

I, of course, cannot evaluate his claim of why he changed his position. Because I do not have teh documents to which he refers, which he indicates that he will submit under seal to you, or to the District Court in the event the Grand Jury indicts.

However, that may be. Under the rules I think we have the right to proceed. And I would like to call my first witness, Mr. Dwyer, whom I have under subpoena, and who is in the hall.

THE COURT: Well, I don't understand the problem. But the witness is sitting back there.

MR. COFFEE: I would say, unless and until you rule that this victim must take the stand, there is no need for him to be in Court, particularly if the Government is concerned that his sitting in Court may raise some concern because the defendant is also here.

THE COURT: Well --

MR. ZELDES: If your Honor please, that most defies logic. The defendant is sitting here. The witness is right outside. He knows the defendant is here. And the witness, the defendant knows the witness is right outside. And I don't understand how the Government can intercept my subpoena, whether or not they are correct in their position whether we are allowed to put him on the stand. It is a decision your Honor will have to make.

THE COURT: I grant you, I don't see any particular problem. Why don't we have the man under subpoena sit in the back, and let's continue this.

Effectively, what the Government is saying,

that he would be in testifying before a Grand Jury and subsequently, presumably, a petit jury, before the United States District Court Judge.

As I say, that comes to mind at first blush. And Mr. Coffey and I have discussed it. And he feels that he cannot disclose to me the reason.

So it is obviously very difficult for me to answer the reasons that he did not give it to me or for you, as a matter of fact.

THE COURT: Well, in other words, you want to go forward and establish a defense, if you can, or if -- well, that may be, to show whatever is in dispute, to show that there is no probable cause.

MR. ZELDES: If your Honor please, may the record show that Paul E. Dwyer is in the courtroom.

Will you stand up?

He is here in response to a subpoena which I have served upon him, returnable for today's date.

THE COURT: Yes.

MR. ZELDES: Then I think the next question which should be directed to Mr. Dwyer, or by your Honor, does he have the documents? If not, why?

MR. COFFEY: He wants the discovery proceedings.

MR. ZELDES: This is not discovery. If I were now to say, Do you have X checkbooks? Y checkbook? I am not asking for details if the words in the subpoena were: Do you have them? If not, why not?

MR. COFFEY: Discovery proceeding.

THE COURT: Anything else, Mr. Coffey?

MR. COFFEY: No, your Honor.

THE COURT: All right.

Well, I will sustain the objection for the simple reason that, as I read and have consistently applied rule 5.1, without regard for collateral or future consequences for the prosecution under one or more defense theories that readily come to mind, if the Government does not go forward there can be no conclusion other than failure to show probable cause.

At which point the complaint simply must be

dismissed. Or, if there is, the defendant is set at liberty without any complication of bond.

I have consistently done that in the past. I understand that is the correc- procedure and will follow it here and dismiss the complaint. And the defendant is released from his bond obligation.

I understand, of course, being, if there is an indictment pending, first appearance before the trial judge, he can answer to the summons; and, thereafter, unless some other factor not yet present comes into play all that will be recommended, and presumably involved would be some sort of nonsurety or personal cognizance bond.

If this question of the subpoena like the more basic procedural question of the Government's not proceeding at all this afternoon is of any significance to the Government, or the defendant, then I think the appropriate record can be followed in the context of an indictment, if it is subject to attack on any grounds relating to these proceedings.

So, Mr. Mase, the complaint which was filed

at your presentment on June 23rd is dismissed. Although, you are aware the Government will expect to secure an indictment as early as tomorrow.

The bond executed and entered into before me on that day, the appearance date of June 23rd, is also discharged and bond is void, with the expectation that you will not, under Government counsel's representation, be put to any duplicative payment because a second bond appears in the next scheduled case.

Now, anything else at this point?

MR. ZELDES: Yes, if your Honor please.

May I place on the record the subpoena that was served on Mr. Dwyer directing him to bring with him all documents, records, and memos relating to those made by him, and all documents and memo relating to transactions and meetings on June 17th, 18th, 20th, 22nd, 1976.

THE COURT: All right. I have not seen the subpoena. You want to stipulate?

MR. COFFEY: Yes, your Honor.

Yes, I assume the original has been returned to the Clerk's office.

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FILED
JUL 14 3 06 PM '76
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
V.	:	CRIMINAL NO. N-76-91
EDWARD V. MASE and EDWARD R. GIANOTTI	:	

INDICTMENT

The Grand Jury charges:

COUNT ONE

From on or about June 15, 1976 until on or about June 22, 1976 at Branford and New Haven, Connecticut and elsewhere in the District of Connecticut, EDWARD V. MASE and EDWARD R. GIANOTTI conspired to use extortionate means within the meaning of Title 18, United States Code, Section 891(7), to collect and attempt to collect from Paul Dwyer, the debtor, an extension of credit, that is, a gambling debt, to wit: the defendants EDWARD V. MASE and EDWARD R. GIANOTTI conspired to make explicit and implicit threats of violence to cause physical harm to the person and property of Paul Dwyer, the debtor, for continued failure to pay fully a gambling debt.

All in violation of Title 18, United States Code, Section 894.

COUNT TWO

From on or about June 15, 1976 until on or about June 22, 1976 at Branford, and New Haven, Connecticut, in the District of Connecticut, EDWARD V. MASE wilfully and knowingly participated in the use of extortionate means within the meaning of Title 18, United States Code, Section 891(7), to attempt to collect from Paul Dwyer, the debtor, an extension of credit, that is, a gambling debt, to wit: the defendant, EDWARD V. MASE, expressly and implicitly threatened the use of physical violence to cause harm to the person of the debtor on or about June 17, 18, 21, and 22, 1976,

that is, the defendant, EDWARD V. MASE, expressly and implicitly threatened the debtor with the infliction of severe physical beatings, and even death, unless the debtor paid the extension of credit.

All in violation of Title 18, United States Code, Section 894.

COUNT THREE

On or about June 22, 1976 at Branford, Connecticut, in the District of Connecticut, the defendant, EDWARD R. GIANOTTI, wilfully and knowingly participated in the use of extortionate means, within the meaning of Title 18, United States Code, Section 891(7), in attempting to collect an extention of credit, that is, a gambling debt, from Paul Dwyer, the debtor, to wit: the defendant, EDWARD R. GIANOTTI, expressly and implicitly threatened the use of physical violence by EDWARD V. MASE, and others, to cause harm to the person of Paul Dwyer unless said Dwyer paid to EDWARD V. MASE a sum of money owed by Dwyer to GIANOTTI and MASE arising out of a gambling debt.

All in violation of Title 18, United States Code, Section 894.

A TRUE BILL

Richard C. deRoy
FOREMAN

PETER C. DORSEY
United States Attorney

Paul E Coffey
BY: PAUL E. COFFEY
Special Attorney
U.S. Department of Justice

I hereby certify that the foregoing is a true copy of the original document on file. Date: 7/14/76

SYLVESTER A. MARKOWSKI
Clerk

By: Lewis Rowe
Deputy ~~In Charge~~

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	)	
	)	
V.	)	CRIMINAL NO. N-76-91
	)	
EDWARD V. MASE and EDWARD R. GIANOTTI	)	

DISCLOSURE TO DEFENDANT EDWARD V. MASE

With respect to those items of disclosure to which the government has not objected, the United States makes the following replies:

1. Books, papers, documents, tangible objects: The below listed objects or papers are material to the defense and/or will be introduced into evidence by the government. Where an object or paper is not yet in our possession, that fact will be noted:

(a) Tape recordings: In this case, there are three tape recorded conversations, all recorded on June 22, 1976, two of which involve the defendant EDWARD V. MASE and the other involving the defendant EDWARD R. GIANOTTI. Copies to both defendants have already been supplied.

(b) United States currency in the amount of $996.33 was seized from defendant MASE. A copy of the inventory is being sent separately to his attorney.

(c) A copy of a note written by defendant MASE and left for the victim, Paul Dwyer, on or about June 15, 1976 has been given to his attorney. A xerox copy of a calendar kept by the victim and reflecting dates of contacts with the defendant MASE is being sent separately to his attorney.

(d) Southern New England Telephone Company records reflecting telephones in service at both defendants' residences and the victim's residence and place of employment will be subpoenaed for trial.

(e) Records of the Connecticut Motor Vehicle Department will also be subpoenaed for all cars used by or registered to the defendants during June, 1976.

(f) Records reflecting places of residence, such as property tax records, landlord records, etc., to reflect the residences and names used by the defendants on or around June 22, 1976 will be subpoenaed when such records,

if they exist, are located.

The United States does not presently anticipate the use of any other physical objects at trial. We may elect to take photographs of the locations where the various incidents germane to the charges took place. In such a case, we shall provide copies to the defense. The victim, Paul Dwyer, has no other records, so far as the government knows, reflecting his dealings with the defendants other than as reflected in (a) and (c), above.

2. The government has not conducted, nor is in the possession of, physical or mental examinations relating to this case. No scientific tests were conducted; no expert reports exist.

3. No search warrants, or applications in support thereof, exist in this case. An inventory of United States currency seized from defendant MASE will be sent to his attorney.

5. As it stands presently, the list of government witnesses is:

(a) Special Agent Stephen Slifka, New Haven, F.B.I.

(b) Special Agent Robert Puckett, New Haven, F.B.I.

(c) Special Agent Emmet Michaels, New Haven, F.B.I.

(d) Special Agent James Hanly, New Haven, F.B.I.

(e) Paul Dwyer, 1 Hill Street, Branford, Connecticut

(f) Ceasar Canestri, 59 Tolli Terrace, New Haven, Connecticut

(g) Joseph Rubbo, address unknown

(h) Melinda Ramsby

(i) Department of Motor Vehicles, State of Connecticut, Records Custodian

(j) Southern New England Telephone Company, New Haven, Connecticut, Records Custodian

(k) Voloshian Cadillac, Amity Road, New Haven, Connecticut, Records Custodian

(l) Charles DeMartin, G.G.'s Restaurant, New Haven, Connecticut

(m) Richard Murphy, 20 Harvelwood Road, New Haven, Connecticut

6. (a) Benefits to government witnesses: Other than regulation witness fees for grand jury appearances, no rewards, promises of non-prosecution or leniency, or inducements have been made to any government witness. Paul Dwyer has been told that the government will protect his safety if anyone

attempts to harm him, but no specific terms were promised or implied.

(i)-(j). No criminal charges are pending or anticipated by the United States against Paul Dwyer. Dwyer apparently has two prior arrests, both of which were nolled or dismissed. The United States is seeking now to see if these arrests, which may not have resulted in charges at all, are reflected in a police record. Dwyer has no history of mental illness or psychiatric examination so far as the government knows. He (Dwyer) indicates, in response to our inquiry, that he does not. His residence is: 1 Hill Street, Branford, Connecticut. His employment office is at: Shoreline Tax, 730 Main Street, Branford, Connecticut.

UNITED STATES OF AMERICA

PETER C. DORSEY
United States Attorney

BY:

PAUL E. COFFEY
Special Attorney
U.S. Department of Justice

C E R T I F I C A T I O N

This is to certify that copies of the foregoing Response have been mailed, postage prepaid, this 18th day of August, 1976 at Hartford, Connecticut to Jacob D. Zeldes, Esquire, 333 State Street, Bridgeport, CT 06604 and J. Daniel Sagarin, Esquire, 355 Main Street, Bridgeport, CT 06603.

PAUL E. COFFEY
Special Attorney
U.S. Department of Justice

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
V.	:	CRIMINAL NO. N-76-91
EDWARD V. MASE and EDWARD R. GIANOTTI	: :	

BILL OF PARTICULARS

COUNT ONE

Request #3. The defendants conspired to damage physically, i.e. to "bust-up" or words to that effect, the office of Paul Dwyer at 730 Main Street, Branford, Connecticut, d/b/a Shoreline Tax.

Request #5. The defendants conspired, as relevant to Count One, to collect a gambling debt owed by Paul Dwyer to EDWARD GIANOTTI. Between June 15-22, 1976 the defendant EDWARD MASE indicated to Dwyer that this debt was then and thereafter owed to him (MASE).

Request #6. The gambling debt referred to in Count One as an extension of credit was incurred on the weekend of June 4-6, 1976 and was in the approximate amount of $4,000. The exact amount, to the dollar, is unknown.

COUNT TWO

Request #1. Paul Dwyer received from Biward Papagoda an extension of credit in the form of a gambling debt. That totalled $985 by September, 1972. The debt was accumulated over a 4-5 week period in August and September, 1972. Between June 4-6, 1976, Dwyer received an extension of credit in the amount of approximately $4,000 from EDWARD GIANOTTI.

Request #4. The total extension of credit owed by Paul Dwyer to Edward Papagoda was $985. The total extension of credit owed by Dwyer to EDWARD GIANOTTI was approximately $4,000. The amount of each individual wager from which the total amounts arose is not known. The defendant EDWARD MASE attempted to collect both accounts simultaneously between June 15-22, 1976.

The defendants MASE and GIANOTTI conspired and individually attempted to collect the GIANOTTI account between June 15-22, 1976.

Request #6. Edward Papagoda extended credit to Paul Dwyer with respect to the 1972 Papagoda-Dwyer account of $985. EDWARD GIANOTTI extended credit between June 4-6, 1976 to Dwyer with respect to the GIANOTTI-Dwyer account of $4,000.

Request #7. EDWARD MASE used extortionate means against Paul Dwyer on June 17, 18, 21, and 22, 1976. EDWARD GIANOTTI used extortionate means against Paul Dwyer on June 22, 1976.

COUNT THREE

Request #1. Paul Dwyer received from Edward Papagoda an extension of credit in the form of a gambling debt. That totalled $985 by September, 1972. The debt was accumulated over a 4-5 week period in August and September, 1972. Between June 4-6, 1976, Dwyer received an extension of credit in the amount of approximately $4,000 from EDWARD GIANOTTI.

Request #4. The total extension of credit owed by Paul Dwyer to Edward Papagoda was $985. The total extension of credit owed by Dwyer to EDWARD GIANOTTI was approximately $4,000. The amount of each individual wager from which the total amounts arose is not known. The defendant EDWARD MASE attempted to collect both accounts simultaneously between June 15-22, 1976. The defendants MASE and GIANOTTI conspired and individually attempted to collect the GIANOTTI account between June 15-22, 1976.

Request #6. Edward Papagoda extended credit to Paul Dwyer with respect to the 1972 Papagoda-Dwyer account of $985. EDWARD GIANOTTI extended credit between June 4-6, 1976 to Dwyer with respect to the GIANOTTI-Dwyer account of $4,000.

Request #7. EDWARD MASE used extortionate means against Paul Dwyer on June 17, 18, 21, and 22, 1976. EDWARD GIANOTTI used extortionate means against Paul Dwyer on June 22, 1976.

Request #10. The defendant EDWARD GIANOTTI threatened to use co-defendant EDWARD MASE, 272 Old Foxon Raod, East Haven, Connecticut, and Joseph "Rubin , believed to be Joseph Rubbo, current location unknown, but

once believed to be residing at 272 Old Foxon Road, East Haven, Connecticut, as persons who would cause harm to Paul Dwyer. EDWARD GIANOTTI did not identify who else, if anyone, was to be included in use of violence against Dwyer as in, for example, "they'll kill you", and "they're crazy people".

UNITED STATES OF AMERICA

PETER C. DORSEY
United States Attorney

BY:

PAUL E. COFFEY
Special Attorney
U.S. Department of Justice

CERTIFICATION

This is to certify that copies of the foregoing Response have been mailed, postage prepaid, this 1st day of September, 1976 at Hartford, Connecticut to J. Daniel Sagarin, Esquire, 855 Main Street, Bridgeport, Connecticut 06603 and Jacob D. Zeldes, Esquire, 333 State Street, Bridgeport, Connecticut 06604.

PAUL E. COFFEY
Special Attorney
U.S. Department of Justice

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	)	
	)	
V.	)	CRIMINAL NO. N-76-91
	)	
EDWARD V. MASE and EDWARD R. GIANOTTI	)	

MOTION OF DEFENDANT EDWARD V. MASE
TO DISMISS THE INDICTMENT

PART A.

1. On June 22, 1976, defendant Mase was arrested without a warrant for an alleged violation of 18 U.S.C. §894, and restrained of his liberty.

2. On June 23, 1976, defendant Mase was released on an appearance bond with surety in the sum of $15,000, and a preliminary examination was scheduled before United States Magistrate Arthur H. Latimer for July 12, 1976, pursuant to Rule 5.1(a), F.R.Cr.P.

3. In preparation for the scheduled preliminary examination, defendant Mase issued a subpoena duces tecum to a material witness and on July 12, 1976, defendant Mase was ready and prepared to go forward with the preliminary examination.

4. On July 12, 1976, the Government attempted to interfere with the Court's process in connection with the subpoena duces tecum served by defendant Mase as set forth in the transcript of the hearing which will be furnished to the Court.

5. To prevent defendant Mase from examining the material witness whom he had subpoenaed to the preliminary examination and purely for its own convenience, the Government decided not to proceed with the preliminary examination and the United States Magistrate ruled that no preliminary examination would be held and dismissed the complaint.

6. On Jul 14, 1976, the Grand Jury returned a true bill indictment against defendant Mase, charging him in two counts with violations of 18 U.S.C. §894.

7. The failure to afford defendant Mase the scheduled preliminary examination deprived defendant Mase of his right to a preliminary examination pursuant to Rule 5.1(a) of the Federal Rules of Criminal Procedure, his right not to be held to answer a criminal charge in the absence of a determination that there is probable cause to believe that an offense has been committed and that defendant committed this offense, which determination shall be made without effect of publicity caused by the arrest instituted by the Government, his right to confront and cross-examine witnesses against him, his right to be informed of the charge against him, his right to subpoena witnesses in his own behalf, his right to the by-product of discovery which a preliminary examination would have afforded, his right to the effective assistance of counsel, and his right to due process of law, all in violation of Rule 5.1(a) of the Federal Rules of Criminal Procedure, and the Fifth and Sixth Amendments to the Constitution of the United States

WHEREFORE, defendant Mase moves the Court to dismiss the indictment, or, in the alternative, to afford defendant Mase a preliminary examination pursuant to Rule 5.1(a) or, in the alternative, to remedy the Magistrate's error in depriving defendant Mase of his right to a preliminary examination by ordering that defendant Mase be granted the material witnesses' grand jury testimony, be permitted to take the witnesses' deposition and/or such other relief to remedy the prejudicial deprivation of defendant Mase's rights.

PART B.

1. On July 14, 1976, the Grand Jury returned a true bill indictment against defendant Mase, charging him in two counts with violations of 18 U.S.C. §894.

2. Section 894 of the Extortionate Credit Transaction Act of 1968, 18 U.S.C. §891 et seq., upon which the indictment is based, is vague and standardless, leaving the public uncertain as to the conduct it prohibits so as to be void for vagueness.

3. Section 894 of the Extortionate Credit Transaction Act of 1968, 18 U.S.C. §891 et seq., upon which the indictment is based, violates freedom of speech.

WHEREFORE, pursuant to the First, Fifth and Sixth Amendments to the Constitution of the United States, defendant Mase moves to dismiss the indictment.

PART C.

1. The indictment alleging offenses by defendant Mase was returned by a Grand Jury of the United States at New Haven, which

Grand Jury was selected pursuant to the District of Connecticut Plan for Random Jury Selection, adopted pursuant to the Jury Selection Act, 28 U.S.C. §1861 et seq., of which this Court is requested to take judicial notice.

2. 28 U.S.C. §1861 provides:

> "It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose."

3. 28 U.S.C. §1862 provides:

> "No citizen shall be excluded from service as a grand or petit juror in the district courts of the United States on account of race, color, religion, sex, national origin or economic status."

4. The Plan violates defendant Mase's rights to a grand jury selected from a fair cross section of the community and is illegal and invalid in that the jury qualification questionnaire of the Plan provides that among those prospective jurors eligible to be excused from jury service are "women with legal custody of a child or children under the age of twelve years," but there is no such provision for men with legal custody of a child or children under the age of twelve years. A copy of the questionnaire is attached as Exhibit A.

WHEREFORE, pursuant to the Fifth and Sixth Amendments to the Constitution of the United States, 28 U.S.C §1867, Rule 6(b)(2)

and Rule 12 of the Federal Rules of Criminal Procedure, defendant Mase moves to dismiss the indictment.

PART D.

1. On June 22, 1976, defendant Mase was arrested without a warrant for an alleged violation of 18 U.S.C. §894, and restrained of his liberty.

2. On June 23, 1976, defendant Mase was released on an appearance bond with surety in the sum of $15,000, and a preliminary examination was scheduled before United States Magistrate Arthur H. Latimer for July 12, 1976, pursuant to Rule 5.1(a), F.R.Cr.P.

3. To prevent defendant Mase from examining the material witness whom he had subpoenaed to the preliminary examination and purely for its own convenience, the Government decided not to proceed with the preliminary examination and the United States Magistrate ruled that no preliminary examination would be held and dismissed the complaint.

4. On July 14, 1976, the Grand Jury returned a true bill indictment against defendant Mase, charging him in two counts with violations of 18 U.S.C. §894.

5. Published reports on July 14, 1976, announced that the indictment of defendant Mase was expected that day, discussed defendant Mase's criminal record and described the anticipated indictment as part of an investigation into "organized criminal activities" in the New Haven area. Copies of certain of these reports are attached as Exhibits B and C.

6. A subsequent published report on July 15, 1976, again mentioned defendant Mase's criminal record and described him as "a significant 'organized crime' figure in this area." A copy of this report is attached as Exhibit D.

7. Published reports on September 1, 1976, further linked defendant Mase with reported "organized crime syndicate figures." A copy of this report is attached as Exhibit E.

8. By releasing this information both before and after the indictment of defendant Mase, the Government has caused, stimulated and generated pretrial publicity prejudicial to defendant throughout the District.

9. This prosecution, under these circumstances, deprives defendant Mase of his right to a trial in a community free from prejudicial material caused by official conduct.

WHEREFORE, pursuant to the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States, defendant Mase moves to dismiss the indictment.

Dated at Bridgeport, Connecticut, this 2nd day of September, 1976.

Jacob D. Zeldes

Elaine S. Amendola

Zeldes, Needle & Cooper, P.C.
333 State Street, P.O. Box 1740
Bridgeport, Connecticut 06601

Attorneys for Defendant Edward V. Mase

If your Name and Address is not correct please show correction

A S S

Marcelida A. Tiscione
10 Carriage Drive
Oxford, Connecticut

RETURN THIS COMPLETED QUESTIONNAIRE PROMPTLY TO:

UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK
U. S. DISTRICT COURT
P. O. BOX 1500
NEW HAVEN 6, CONNECTICUT

SPELL YOUR COUNTY

HOME

OFFICE

(3) HAVE YOU SERVED FOR THE PAST YEAR IN THE SAME COUNTY? ☐ YES ☐ NO

IF "NO" GIVE NAME OF OTHER COUNTIES OR STATES IN WHICH YOU SERVED DURING THE YEAR, AND SHOW DATES.

A IDENTIFICATION

(1) BIRTH DATE — month | day | year

AGE

(2) U. S. CITIZEN ☐ YES ☐ NO

(4) MR. ☐ MRS. ☐ MISS. ☐

☐ MARRIED ☐ SINGLE ☐ WIDOWED
☐ DIVORCED OR SEPARATED

(5) PLEASE INDICATE FOR RACE OF THE FOLLOWING LIST

FEDERAL LAW REQUIRES YOU AS A PROSPECTIVE JUROR TO INDICATE YOUR RACE. THIS ANSWER IS REQUIRED SOLELY TO ASSURE NONDISCRIMINATION IN JURY SELECTION AND HAS A CONSIDERED EFFECT ON QUALIFICATIONS FOR JURY SERVICE. BY ANSWERING THIS QUESTION, YOU HELP THE FEDERAL COURT CHECK AND IMPROVE THE JURY SELECTION PROCESS SO THAT DISCRIMINATION CANNOT OCCUR. IN THIS WAY THE FEDERAL COURTS CAN FULFILL THE POLICY OF THE UNITED STATES WHICH IS TO PROVIDE JURORS WHICH ARE RANDOMLY SELECTED FROM A FAIR CROSS SECTION OF THE COMMUNITY.

☐ INDIAN (American)
☐ ORIENTAL
☐ BLACK (or Negro)
☐ WHITE
☐ OTHER (Specify)

B OCCUPATION

IF YOUR ANSWER TO QUESTIONS 6 & 7 HAVE NO BEARING ON YOUR QUALIFICATION FOR JURY SERVICE. THESE FORMS, IF YOU FIND EITHER QUESTION OBJECTIONABLE YOU NEED NOT ANSWER

(6) ARE YOU NOW EMPLOYED? ☐ YES ☐ NO

(7) YOUR EMPLOYER'S NAME

FEDERAL LAW REQUIRES THAT YOU ANSWER NO. 8 AND SO THAT THE FEDERAL COURTS MAY DETERMINE PROMPTLY WHETHER YOU ARE WITHIN AN EXCUSED OR EXEMPT CATEGORY (SEE "E" & "F" BELOW)

(8) YOUR OCCUPATION OR BUSINESS

(9) BUSINESS ADDRESS OR EMPLOYER'S ADDRESS

Street

City State

C EDUCATION AND HEALTH

(10) CAN YOU READ, WRITE, SPEAK AND UNDERSTAND THE ENGLISH LANGUAGE? ☐ YES ☐ NO

(11) WHAT IS THE EXTENT OF YOUR EDUCATION
☐ Grade School ☐ Some High School ☐ High School Graduate ☐ Some College ☐ College Graduate ☐ Post Graduate Work or Degree

(12) DO YOU HAVE ANY PHYSICAL OR MENTAL INFIRMITY IMPAIRING YOUR CAPACITY TO SERVE AS JUROR? ☐ YES ☐ NO

(13) IF "YES" PLEASE EXPLAIN (& attach letter from a doctor)

D CRIMINAL RECORD

(14) HAVE YOU EVER BEEN CONVICTED OF A STATE OR FEDERAL CRIME PUNISHABLE BY IMPRISONMENT FOR MORE THAN ONE YEAR? ☐ YES ☐ NO

(15) IF "YES" HAVE YOU BEEN GIVEN FULL CIVIL RIGHTS OR PARDON OR AMNESTY? ☐ YES ☐ NO

(16) ARE ANY SUCH CHARGES PENDING AGAINST YOU? ☐ YES ☐ NO

E EXEMPTIONS

OFFICER YOU ARE EMPLOYED ON A FULL TIME BASIS AS ONE OF THESE

☐ PUBLIC OFFICIAL OF THE UNITED STATES, STATE OR LOCAL GOVERNMENT WHO IS EITHER ELECTED TO PUBLIC OFFICE OR DIRECTLY APPOINTED BY ONE ELECTED TO OFFICE.

☐ MEMBER OF ANY FULL-TIME REGULAR POLICE OR FIRE DEPARTMENT ENGAGED IN SERVING, PROTECTING OR PRIVATE EMPLOYED.

☐ MEMBER IN ACTIVE SERVICE OF THE ARMED FORCES OF THE UNITED STATES.

F GROUNDS FOR EXCUSE

YOU MAY BE EXCUSED BY THE COURT FROM SERVICE AS A JUROR IF YOU FALL WITHIN A CATEGORY LISTED HERE OR ON AN ENCLOSED PAPER. IF LIST IS HERE, MARK THAT EXCUSE WHICH APPLIES TO YOU IF YOU DEMAND TO BE EXCUSED FOR THAT REASON. (IF LIST OF EXCUSES APPEARS OR IS ENCLOSED SKIP IT. FOLLOW INSTRUCTIONS THERE.)

REMEMBER ALL CITIZENS HAVE AN OBLIGATION TO SERVE AS JURORS WHEN CALLED UPON

I SWEAR AND AFFIRM THAT ALL ANSWERS ARE TRUE TO THE BEST OF MY KNOWLEDGE & BELIEF

DATE SIGNED

SIGN HERE ▶

If another person filled out the above form, please indicate your name, address and reason why on other side of form.

EXHIBIT A

UNITED STATES DISTRICT COURT A34

PLEASE NOTE: Unless shown elsewhere, the address of the U.S. Court which sent you this questionnaire is shown in the top right corner on reverse side.

Dear Prospective Juror:

Your name has been drawn by lot and you are being considered for jury service in the United States District Court. Trial by jury is a keystone of our system of justice. Jury service is therefore both an opportunity and an obligation of every American. Jurors will receive mileage and, unless they are Federal Government employees, $20.00 per day for each day of service.

This is not a summons for jury service. It is a way of obtaining some information about you from which we can determine whether you are qualified to serve. Please answer each question, sign and return the form within ten days. If we find you qualified, you may be summoned at a later date.

If you are unable to fill out this form, someone else may do it for you provided that person indicates below why it was necessary for him to do it instead of you.

If you do not return this questionnaire form within ten days you are liable to be summoned to report at your expense for completion of the questionnaire at this office.

There are certain grounds for excuse or exemption from jury service. If you are exempt or claim a right to be excused, give us that information under sections E and F. If you show under section C. that you have a physical or mental infirmity, please attach a letter from your doctor, if possible. Do not ask to be excused by telephone.

If your address changes after you have returned this questionnaire, please notify us promptly by letter.

CLERK,

UNITED STATES DISTRICT COURT

SPACE FOR OFFICIAL USE ONLY

[illegible]
TO THE QUESTIONNAIRE ABOVE

Instructions For Claiming An Excuse From Jury Service
Under Section F of Enclosed Questionnaire

This Court has ordered that members of the occupational classes or groups of persons listed below may claim excuse from jury service, if they desire to do so. You may serve as a juror if you wish. However, if you are in one of the groups listed below, and it is your desire to assert a right to be excused, please circle the group listed below to which you belong and explain the ground for your claim in response to Section F on the questionnaire form.

The members of the following groups are entitled to request that they be excused if they elect to do so:

(1) Persons over seventy years of age;

(2) Ministers of the gospel, priests, rabbis and members of religious orders actively so engaged. If you claim excuse under this category, YOU NEED NOT FURNISH ANY INFORMATION WITH RESPECT TO YOUR RELIGION IF YOU FIND IT OBJECTIONABLE TO DO SO;

(3) Attorneys, physicians and dentists, and registered and licensed practical nurses, actively so engaged;

(4) Any person who has served as a grand or petit juror in a State or Federal Court during the past two years; If you claim excuse under this category, indicate the court and dates of service in response to Section F of the questionnaire.

-2-

(5) Schoolteachers in public, parochial or private schools actively teaching: If you claim excuse under this category, indicate the school and its address in response to Section F of the questionnaire;

(6) Women with legal custody of a child or children under the age of twelve years;

(7) Sole proprietors of businesses;

(8) All persons residing more than one hour's travel time from the United States Courthouse at New Haven if summoned for jury service.

If you claim excuse under Category 8, indicate the travel time (one-way) from your residence to the courthouse at New Haven ( ), in response to Section F of the questionnaire.

I swear or affirm that to the best of my knowledge and belief I am entitled to the excuse(s) I have circled above, and I request to be granted such excuse.

Date: _____ _____
Signature

BEST COPY AVAILABLE

A37

New Haven Journal-Courier, July 14, 1976, p. 1

In Area Loanshark Case

Indictment Due Today

By ANDREW L. HOULDING
Staff Reporter

A federal grand jury is expected to return an indictment today against Edward V. Mase for alleged loansharking activities.

In preparation of its case against Mase, federal officials brought before the grand jury a bevy of New Haven-area men who have reportedly been involved in organized criminal activities.

The group of subpoenaed witnesses included Charles DeMartin, who is currently appealing a state Superior Court conviction on gambling conspiracy charges; Caesar Cansetri, who reportedly has a record of gambling arrests ane has also been convicted on larceny charges; and Robert "Suedes" Celentano, who was acquitted of murder charges in connection with the death of John Cotter.

Mase was arrested by FBI agents about two weeks ago.

According to an official complaint filed with a federal magistrate, Paul E. wyer of 1 Hill St., Branford, owed Mase $7,325. The complaint states that "on June 17... Mase told Dwyer words to the effect that Dwyer would suffer physical injury if he went to the police about this matter; on June 18 in Branford, Mase told Dwyer words to the effect that he would be physically injured if payment was not immediately forthcoming."

Dwyer apparently then went to the FBI and told agents of the alleged threats; agents were present in Dwyer's home June 22 when "Mase came to that residence and threatened Dwyer with physical injury in attempting to induce him to repay the aforestated extension of credit."

A federal magistrate Monday convened a "probable cause" hearing on the Mase arrest, and according to U.S. Atty. Peter Dorsey, the arrest was dismissed "on technical grounds."

Dorsey indicated that the dismissal came because federal Strike Force Atty. Paul E. Coffey had not been ready to proceed against Mase at that point, but that the dismissal Monday will have no effect on the eventual charges against Mase.

Mase, 50, pleaded guilty in June, 1972, to arson in the firebombing of the West Haven Funeral Home on the Green and to charges of theft of $10,000 worth of carpeting from a New Haven warehouse.

He was given a three- to five-year prison sentence in Superior Court at that time. State prosecutors then described Mase as having an extensive police record dating back to 1944, when he was found guilty of desertion from the U.S. Army, and he was subsequently convicted of breaking and entering and numerous gaming charges.

His attorney in the arson and theft cases claimed Mase only

(Continued on Page 33)

Indictment Due Today

(Continued from Page 1)

pleaded guilty because he could not endure the psychological stress of a trial.

According to reports from sources close to some of the subpoenaed witnesses Tuesday, DeMartin and most of his associates invoked the Fifth Amendment and refused to answer grand jury questions.

Canestri reportedly did respond to a number of questions about his acquaintances, and spent about 45 minutes in the hearing room. Most other witnesses, after waiting in the unusually crowded federal court building corridoors, spent only a few minutes before the grand jury.

While he waited, DeMartin — dressed in an expensively tailored black suit and open-necked white shirt —smoked incessantly and chatted with associates and, for a while, with FBI Special Agent Stephen J. Slifka, who headed the Mase case.

Dorsey Tuesday evening said the grand jury is expected to return an indictment today.

Other subpoenaed witnesses Tuesday were Edward Papagoda, Edward Gianotti and Gerry Redente.

The witnesses in the Mase case mingled in the corridors with young men from the Wooster Square neighborhood who were subpoenaed in connection with a concurrent grand jury inquiry into alleged fraud at the Wooster Square Neighborhood Corporation.

New Haven Register, July 14, 1976, p. 1

Indictments Due In Crime Probe

A federal grand jury, which met here Tuesday to inquire into alleged organized crime activity in the New Haven area, was expected to hand up indictments today.

The inquiry is reportedly focused on an alleged extortion attempt against a Branford man to whom a loan had been given.

According to sources, the man was told he would be physically harmed unless he repaid about $7,500. The threat was reportedly made in mid-June.

A probable cause hearing into the matter was convened Monday by a federal magistrate here and centered on the alleged role of Edward V. Mase, 50, of this area, in connection with the incident.

The sought-for arrest of Mase by federal prosecutors was, however, dismissed on "technical grounds," according to U.S. Attorney Peter Dorsey.

Among the several men subpoenaed by the prosecutors for the grand jury inquiry was Charles DeMartin, who is currently appealing a State Superior Court gambling conviction, and Robert "Suedes" Celentano, who was recently acquitted of a murder charge.

Also reportedly subpoenaed was Caesar Canestri of this area who reportedly has a

(Continued on Page 2)

Indictments Expected Today In Crime Probe

(Continued from Page 1)

record of gambling and other arrests.

According to sources close to the case, DeMartin and most of the others invoked their Fifth Amendment privilege and refused to answer the grand jury questions.

Canestri reportedly did respond to a number of questions and spent about 45 minutes in the hearing room.

Dorsey said Tuesday the case for Mase's arrest was dismissed Monday because Federal Organized Crime Strike Force Attorney Paul E. Coffey was not ready to proceed against Mase at that point, but that the dismissal has no effect on the continuing investigation of Mase's alleged role in the case.

New Haven Register, July 15, 1976, p. 52

Crime Probe Isn't Over

Wednesday's two loansharking indictments in U.S. District Court here may be only the start of what federal officials say is a broad probe of racketeering in the New Haven area.

The two men indicted here Wednesday by a federal grand jury were charged with conspiracy and using extortionate means to collect a gambling debt.

The pair, Edward V. Mase, 50, of New Haven, and Edward R. Giannotti, about 30, of Branford, are expected to enter a plea to the charges within seven days.

The alleged victim was identified as Paul Dwyer of Branford, who reportedly owed approximately $7,000.

According to Federal Organized Crime Strike Force Attorney Paul E. Coffey the conspiracy and attempt to collect the debt occurred during the middle of last month.

Mase was arrested in connection with the alleged crime last June 22 at Dwyer's home, Coffey said. Both Mase and Giannotti are presently at liberty.

Mase, in 1972, was sentenced to a three to five-year term in prison in connection with the firebombing of the West Haven Funeral Home on the Green. He allegedly acted as an agent for a rival funeral director.

He has been described as a significant "organized crime" figure in this area.

Giannotti is without a criminal record, according to the authorities.

The indictment charged that the pair used "threats" in an attempt to collect the debt from Dwyer.

New Haven Journal-Courier, September 1, 1976, p. 1

As U.S. Witness

DeMartin Listed

By ANDREW L. HOULDING
Staff Reporter

Charles DeMartin, reputed organized crime boss in the New Haven area, is listed in federal court documents as a prosecution witness who may be called to testify against accused loan shark Edward V. Mase and an alleged accomplice in their upcoming trial.

Sources indicate that DeMartin — who was not expected to testify voluntarily — might be given "use immunity" and compelled to testify or face contempt of court proceedings.

DeMartin, who invoked the Fifth Amendment privilege against self-incrimination in response to questioning during three appearances before a federal grand jury, Tuesday branded the government's move as part of a campaign of harassment.

DeMartin said in an interview that he does not intend to be a government witness and suggested that the government is hoping to embarass him by listing him as a prosecution witness. He said he knows nothing of the Mase case and that there's "no way" that he'll testify against Mase, whom he described as a friend.

DeMartin and several other alleged organized crime syndicate figures appeared July 13 before the federal grand jury that indicted Mase and Edward R. Gianotti the next day on loan sharking charges.

Federal investigative sources claim

(Continued on page 7)

DeMartin Listed

(Continued from Page 1)

Mase and Gianotti hold subordinate positions to DeMartin's in the New Haven-Bridgeport area syndicate.

The Mase-Gianotti case was investigated by FBI agents under the direction of James McShane and will be prosecuted by Special U.S. Atty. Paul Coffey, who heads the Hartford-based federal strike force against organized crime in Connecticut. Federal agents indicate they are interested in obtaining further information about loan-sharking and loan-shark victims.

Court papers filed by Coffey in connection with the Mase case indicate [illegible] New Haven-based FBI agents — Stanley Slifka, Robert Puckett, Emmett Michaels, and James Hanly — and the alleged loan-shark victim, Paul Dwyer, will be the lead-off prosecution witnesses.

The FBI agents arrested Mase at Dwyer's Branford home after taping, with Dwyer's permission, a conversation between Mase and Dwyer. Gianotti was arrested later, after the grand jury indictment, on the basis of Dwyer's testimony and a tape recording of a telephone conversation between Dwyer and Gianotti.

Dwyer is the proprietor of the Shoreline Tax Service, Main Street, Branford, and reportedly has gambled heavily on sporting events.

The documents filed by Coffey in connection with the Mase case — which is expected to come to trial Sept. 27 — fail to indicate what testimony DeMartin might be asked to give. Coffey and the federal agents declined to comment on DeMartin's potential testimony.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
V.	:	CRIMINAL NO. N-76-91
EDWARD V. MASE and EDWARD R. GIANOTTI	: :	

GOVERNMENT REQUEST FOR CHARGES

COUNT ONE

A. Elements Of The Offense

Count One alleges that the defendants EDWARD V. MASE and EDWARD R. GIANOTTI conspired to use extortionate means to collect and to attempt to collect an extension of credit, i.e. a gambling debt, from one Paul Dwyer between June 15-22, 1976. It is further charged that the defendants conspired to make explicit and implicit threats of violence that would result in harm to the person of Paul Dwyer if he failed to pay fully the gambling debt.

In order to convict either defendant, you must find beyond a reasonable doubt, as I will later define that term, that:

(a) A Plan or scheme to use extortionate means of an extension of credit, at the time alleged in the indictment, had been wilfully formed by EDWARD V. MASE and EDWARD R. GIANOTTI;

(b) That each defendant, EDWARD V. MASE and EDWARD R. GIANOTTI, wilfully became a member of that conspiracy;

(c) That one of the conspirators thereafter knowingly committed at least one overt act in furtherance of some object or purpose of the conspiracy, as charged. United States v. Rizzo, 373 F.Supp. 204, 206 (S.D.N.Y.), aff'd, 493 F.2d 1399 (2d Cir.), cert. denied, 419 U.S. 872.

An extortionate means is any means which involves the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person or property of any person. Title 18, United States Code,

Section 891(7). In the crime of conspiracy, it is not necessary to prove the actual use of extortionate means, so long as extortionate means were anticipated and an overt act in furtherance of the plan was committed. Rizzo, supra.

An extension of credit, which is a term used in the indictment, is simply a debt, any debt. In this case, it is alleged to have been a gambling debt owed by Paul Dwyer. It is irrelevant, if you find that a debt was owed by Paul Dwyer, that the amount of the debt was disputed between Paul Dwyer and the person to whom he owed it, or that the debt resulted from gambling. Title 18, United States Code, Section 891(1).

B. Definition And Description Of A Conspiracy

A conspiracy is a combination of two or more persons, by concerted action, to accomplish some unlawful purpose by unlawful means. So, a conspiracy is a kind of "partnership in criminal purposes", in which each member becomes the agent of every other member. The gist of the offense, is a combination or agreement to disobey, or to disregard, the law.

Mere similarity of conduct among various persons, and the fact they may have associated with each other, and may have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy.

However, the evidence in the case need not show that the members entered into any express or formal agreement, or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished. What the evidence in the case must show beyond a reasonable doubt, in order to establish proof that a conspiracy existed, is that members in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

The evidence in the case need not establish that all the means or methods set forth in the indictment were agreed upon to carry out the alleged conspiracy; nor that all means or methods, which were agreed upon, were actually used or put into operation; nor that all of the persons charged to

have been members of the alleged conspiracy were such. What the evidence in the case must establish beyond a reasonable doubt is that the alleged conspiracy was knowingly formed, and that one or more of the means or methods described in the indictment were agreed upon to be used, in an effort to effect or accomplish some object or purpose of the conspiracy, as charged in the indictment; and that the two defendants were knowingly members of the conspiracy, as charged in the indictment. Devitt and Blackmar, Federal Jury Instructions, Vol. 1, Ch. 23, p. 365 (1970).

Since there are only two conspirators alleged in Count One and both are on trial, and since it is not possible for a person to conspire with himself, you cannot, with respect to Count One, convict one defendant and acquit the other. United States v. Mayr, 350 F.Supp. 1291 (S.D.Fla.), aff'd, 487 F.2d 67 (5th Cir. 1974), cert. denied, 417 U.S. 914.

If it appears beyond a reasonable doubt from the evidence in the case that the conspiracy alleged in the indictment was wilfully formed, and that each defendant wilfully became a member of the conspiracy either at its inception or afterwards, and that thereafter one or more of the conspirators knowingly committed one or more of the overt acts charged in furtherance of some object or purpose of the conspiracy, then there may be a conviction even though the conspirators may not have succeeded in collecting the debt allegedly owed by Paul Dwyer and in fact may have failed in so doing.

The extent of any defendant's participation, moreover, is not determinative of his guilt or innocence. A defendant may be convicted as a conspirator, if you find him to have been so, even though he may have played only a minor part in the conspiracy.

An "overt act" is any act knowingly committed by one of the conspirators, in an effort to effect or accomplish some object or purpose of the conspiracy. The overt act need not be criminal in nature, if considered separately and apart from the conspiracy. It may be as innocent as the act of a man walking across the street, or driving an automobile, or using a telephone. It must, however, be an act which follows and tends toward accomplishment of the plan or scheme, and must be knowingly done in furtherance of some object or purpose of the conspiracy charged in the indictment. Devitt and Blackmar, supra, at p. 442.

Before the jury may find that a defendant, or any other person, has become a member of a conspiracy, the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed, and that the defendant, or other person who is claimed to have been a member, knowingly participated in the unlawful plan, with the intent to advance or further some object or purpose of the conspiracy.

To act or participate knowingly means to act or participate voluntarily and intentionally, and not because of mistake, or accident, or other innocent reason. So, if a defendant, or any other person, with understanding of the unlawful character of a plan, intentionally encourages, advises or assists, for the purpose of furthering the undertaking or scheme, he thereby becomes a knowing participant - a conspirator.

In determining whether or not a defendant, or any other person, was a member of a conspiracy, you are not to consider what others may have said or done. That is to say, the membership of a defendant, or any other person, in a conspiracy, must be established by the evidence in the case as to his own conduct, what he himself knowingly said or did.

Whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed, and that a defendant was one of the members, then the statements and the acts by any person likewise found to be a member may be considered by the jury as evidence in the case as to the defendant found to have been a member, even though the statements and acts may have occurred in the absence and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuance of such conspiracy, and in furtherance of some object or purpose of the conspiracy. Otherwise, any admission or incriminatory statement made or not done outside of court, by one person, may not be considered as evidence in the case against any person who was not present and heard the statement made, or saw the act done. Devitt and Blackmar, supra, at p. 369-370.

While you may consider the testimony of Paul Dwyer as to what reaction he said he had to the threats he attributed to defendants EDWARD MASE and EDWARD GIANOTTI, I charge you that it is not necessary that the threats, if you find that one or more were made, actually placed Paul Dwyer in fear of

harm to himself or to his property. Actual fear is not an element of the offense. You need only conclude, to find that a statement by a defendant as an "extortionate means", that the statement was designed or reasonably calculated to induce fear, in the light of the surrounding circumstances, in the mind of an ordinary person. It is the conduct of the defendant, not the victim's individual state of mind, to which the statute is directed. United States v. Natale, 526 F.2d 1161, 1168 (2d Cir. 1975).

If you find that a conspiracy has been established within the period charged in the indictment, it is considered to continue until shown to terminate and each conspirator is presumed to continue as a member until such time as his withdrawal is demonstrated or the conspiracy ends or the object of the conspiracy has been accomplished. United States v. Borelli, 336 F.2d 376 (2d Cir. 1964), cert. denied, 379 U.S. 960 (1965). You heard testimony that the defendant, EDWARD V. MASE, was confronted by F.B.I. agents inside the Branford residence of Paul Dwyer shortly before a telephone call was received by Paul Dwyer from EDWARD GIANOTTI. The fact that Government agents had already confronted EDWARD V. MASE does not preclude you from considering the statements of EDWARD GIANOTTI on June 22 to Paul Dwyer as admissable against EDWARD MASE if you find that the conspiracy as charged in the indictment still existed and if you find that EDWARD GIANOTTI, unaware of the confrontation, made his statements to Paul Dwyer to further the object of the conspiracy. United States v. Borelli, supra, at p. 389; United States v. Agueci, 310 F.2d 817 (2d Cir. 1962), cert. denied, 372 U.S. 959 (1963). Unless and until a co-conspirator withdraws from an existing conspiracy he remains responsible for the acts and declarations of his co-conspirators which are reasonably designed to carry out the objects of the conspiracy as understood by its participants. Withdrawal does not automatically occur through cessation of activity by a co-conspirator resulting from his arrest or detention; he must undertake affirmative action, either by making a clean breast to the authorities or by communicating his abandonment in a manner reasonably calculated to reach his co-conspirator. While the burden to prove each and every element beyond a reasonable doubt remains always with the Government, and while the defendant has no burden to establish his innocence, which is presumed, once it is proven that a defendant has become a member of a conspiracy the burden of establishing

withdrawal, if asserted, lies on the defendant. Borelli, supra, at p. 388.

COUNT TWO

A. Elements

In Count Two the defendant, EDWARD V. MASE, is charged separately with knowingly using extortionate means on several occasions between June 15 and 22, 1976 as a single pattern of acts designed to collect a gambling debt from Paul Dwyer. In order to convict the defendant EDWARD MASE of this charge, you must first find beyond a reasonable doubt each of the following elements:

(a) That there was a debt owed by Paul Dwyer, the principal or interest on which was still outstanding;

(b) that EDWARD MASE attempted to collect the principal or interest due on said debt;

(c) that the defendant EDWARD MASE used "extortionate means", as I have previously defined that term to you, to collect said debt, United States v. Natale, supra.

You must also find that the defendant, EDWARD MASE, acted knowingly, as I will define that term.

There is no requirement under the law that the Government must prove that the defendant used certain specific words that expressly conveyed the harm threatened. You must consider whether the statements found by you to have been made by EDWARD MASE, if any, to Paul Dwyer were reasonably designed, either by express terms or by reasonable inference, the import of which would not be mistaken by a reasonable person, to induce fear of violence either to Paul Dwyer's person or to his property. Title 18, United States Code, Section 891(7).

If you find that during the period charged in Count Two that the defendant, EDWARD V. MASE, knowingly threatened the use of violence to collect a gambling debt from Paul Dwyer, and you are satisfied of this beyond a reasonable doubt as to each element, you may convict. Count Two charges an

offense against the defendant EDWARD MASE individually. You do not have to find in Count Two, as opposed to the elements I stated to you in Count One, that EDWARD MASE acted in concert with any other person before you can convict. It is sufficient to convict on Count Two if you find that EDWARD MASE alone fulfilled the elements I have just set out.

COUNT THREE

A. Elements

In Count Three the defendant, EDWARD GIANOTTI, is charged separately with knowingly using extortionate means on June 22, 1976 at Branford, Connecticut to collect a gambling debt from Paul Dwyer. In order to convict the defendant, EDWARD GIANOTTI, of this charge, you must first find beyond a reasonable doubt each of the following elements:

(a) That there was a debt owed by Paul Dwyer, the principal or interest on which was still outstanding;

(b) that EDWARD GIANOTTI attempted to collect the principal or interest due on said debt;

(c) that the defendant EDWARD GIANOTTI used "extortionate means" to collect the principal or interest.

(The United States requests the Court to reiterate the definition of "extortionate means" as found in Title 18, United States Code, Section 891(7).)

You must also find that the defendant, EDWARD GIANOTTI, acted knowingly, as I have already defined that term.

As I previously told you, with respect to Count Two, there is no requirement that the Government show that the defendant GIANOTTI induced fear in the victim by the alleged threats, but only that the threats, if you find they were made, were designed to induce fear of violence in the mind of a reasonable person.

If you find that during the period charged in Count Three that the defendant, EDWARD R. GIANOTTI, knowingly threatened the use of violence to collect a gambling debt from Paul Dwyer, and you are satisfied of this beyond a reasonable doubt as to each element, you may convict. Count Three charges an

offense against the defendant EDWARD GIANOTTI individually. You do not have to find in Count Three, as opposed to the elements I stated to you in Count One, that EDWARD GIANOTTI acted in concert with any other person before you can convict. It is sufficient to convict on Count Three if you find that EDWARD GIANOTTI alone fulfilled the elements I have just set out.

UNITED STATES OF AMERICA

PETER C. DORSEY
United States Attorney

BY:

PAUL E. COFFEY
Special Attorney
U.S. Department of Justice

CERTIFICATION

This is to certify that copies of the foregoing Request for Charges has been mailed, postage prepaid, this ____ day of September, 1976 at Hartford, Connecticut to Jacob D. Zeldes, Esquire, 333 State Street, Bridgeport, Connecticut 06603, and J. Daniel Sagarin, Esquire, 855 Main Street, Bridgeport, Connecticut 06604.

PAUL E. COFFEY
Special Attorney
U.S. Department of Justice

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
V.	:	CRIMINAL NO. N-76-91
EDWARD V. MASE and EDWARD R. GIANOTTI	:	

TRANSCRIPT

TIME : 4:02 P.M. LOCATION: 1 Hill Street, Branford, Connecticut

DATE : June 22, 1976 PARTIES : PAUL EDWARD DWYER, EDWARD VICTOR MASE

DWYER : Hello

MASE : Paul

DWYER : Yes

MASE : Eddie

DWYER : Hi Eddie

MASE : What's doing?

DWYER : Bad news.

MASE : What?

DWYER : I said bad news.

MASE : What do you mean bad news?

DWYER : I went to everybody. All my friends. My parents, everybody. I don't know what to do.

MASE : Ah, meet me on the corner.

DWYER : What corner?

MASE : You know where you go in on the what's that the the. What do you call the street there where Nellie Green's is what do you call that street?

DWYER : Short Beach Road.

MASE : Yeah, ah meet me out there. There's that what's the name of them stores in the front there. That's on that corner.

DWYER : There's a Pfeiffer Gun Shop right there.

MASE : Yeah, okay I'll meet you there in five minutes.

DWYER : Okay.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
V.	:	CRIMINAL NO. N-76-91
EDWARD V. MASE and EDWARD R. GIANOTTI	:	

TRANSCRIPT

TIME : 4:49 P.M. - 4:55 P.M.

DATE : June 22, 1976

LOCATION: 1 Hill Street
Branford, Connecticut

PARTIES : EDWARD V. MASE
PAUL DWYER
STEVE SLIFKA

MASE : Hey Paul

DWYER : Yeah. (To dog) Go away go away.

MASE : Well

DWYER : I don't have any money Eddie.

MASE : Come outside.

DWYER : I don't want to go outside.

MASE : What?

DWYER : I don't want to go outside.

MASE : I'm not gonna do nothing. I just want to talk to you.

DWYER : I'm afraid. I'm afraid your gonna bother, hit me.

MASE : I'm not gonna hit you, come on.

DWYER : I'm not gonna come outside. I'm scared, I don't want to get hurt.

MASE : You're not gonna get hurt. I wanna talk to you.

DWYER : Talk to me from here.

MASE : What good is it talking from here.

DWYER : I'm not going to go out, you know.

MASE : No one's gonna hurt you.

DWYER : I'm afraid. I don't wanna get hit.

MASE : You're not gonna get hit. I don't do things like that, what's the matter with you.

DWYER : I don't want to go outside Eddie.

MASE : You said you were gonna have some money today.

DWYER : I tried every resource. I did everything humanly imaginable.

MASE : Can we sit down for a minute?

DWYER : Come on.

MASE : What are you gonna do here Paul?

DWYER : Wow, it stinks here. I don't know what to do. I don't know what to say. I tried everything you know, too high. Too much money, too high. Big rate.

MASE : Well how much you got?

DWYER : I don't have anything. I got 8 dollars.

MASE : You said you were getting 5. You knew you were getting 5 yesterday.

DWYER : I didn't get it. I was suppose to get it last night.

MASE : And what happened?

DWYER : They didn't things. They'll pay me at the end of the week. Its tacky. I just varnished it.

MASE : Whose house is this, your mother's?

DWYER : No, it's my landlords. I just pay rent here. I'm behind on this thing too.

MASE : Well Paul you gotta do something Paul. For your own good. I'm only telling you for your own good. You gotta do something. Bachelors quarters?

DWYER : Huh?

MASE : Bachelors quarters?
What she charge you on this?

DWYER : Buck and a half.

MASE : Buck and a half a month. No heat though?

DWYER : There's the heat right there. That't the trouble.

MASE : Is it hot enough?

DWYER : It's hot, up, it's too hot.

MASE : Hot, hot, hot, I mean what temperature.

DWYER : It's too hot, the, no control, constanly going. You know.

MASE : You have to pay for the heat. It's not a bad little place though. Not bad, nice.

DWYER : Yeah.

MASE : Whose furniture is this, yours?

DWYER : My girl's.

MASE : These here your girl's?

DWYER : No, that's that's hers, yeah.

MASE : These are hers?

DWYER : Yeah, that's what she does. She - she breaks them down buys them for 5 dollars and cuts them up and varnishes them and

MASE : Does she sell them then?

DWYER : Huh? Yeah.

MASE : Your girl, yeah, that's nice. What she want for these?

DWYER : I don't know. They won't be done for another two weeks.

MASE : Yeah, what she put in the in the in the seats, tapestry?

DWYER : No, ah what do you call that thing. It's ah it's a leather thing. Wax it up.

MASE : Well, I'll tell you Paul. Something gotta be done about this. You gotta come up with some kind of ah easier line or approach, that's it.

DWYER : Yeah.

MASE : You gotta do something Paul. I gave you a hell of a fucking deal to start with.

DWYER : I know.

MASE : I don't wanna see nothing happen to you anyhow.

DWYER : Neither do I.

MASE : You know what I mean. But you're not trying Paul. You gotta second floor to this place?

DWYER : Just a bathroom.

MASE : Just a bathroom, no rooms?

DWYER : Yeah.

MASE : Can they rent these out?

DWYER : No.

MASE : Your girl home?

DWYER : No, she'll be come about 5 o'clock she'll be home.

MASE : Well, what are you gonna do Paul?

DWYER : I don't know. Go out pushing again.

MASE : What?

DWYER : I'll have to go out pushing again I guess.

MASE : Yeah, you like to pick the phone up you know. She gonna sell this table too?

DWYER : Yeah.

MASE : Let me know how much she wants for this table and ah and four of them chairs.

DWYER : The table will be done in about probably 12 days 18 days.

MASE : You got four chairs?

DWYER : Yeah, there's a chair in the other room over there.

MASE : Yeah I see it. Well, find out what she wants for the table and the four chairs.

DWYER : Okay.

MASE : Well, what are we gonna do?

DWYER : I don't know.

MASE : Can you [illegible] tomorrow?

DWYER : I'll try. I don't know [illegible]gh, I can't.

MASE : You try you, aren't you working?

DWYER : I'm working, everybody else needs money too. I'm ah you know these are all business things. Everything is tight, everybody's broke.

MASE : What if your mother knew you were gonna get killed. What happens now?

DWYER : I don't know. My mother is 69 years old. Whay, am I gonna die?

MASE : Huh?

DWYER : Am I gonna die then?

MASE : I don't know. No one said that.

DWYER : I'll ask her. I'll tell her. I don't know.

MASE : I gotta get some money here. How many more days do you need.

DWYER : I tried for two weeks. I'll do it again.

MASE : How long?

DWYER : I tried for two weeks already.

MASE : Hi!

STEVE SLIFKA: Hey, Mr. Mase.

MASE : How are you?

STEVE : How are you? Sit down. We wanna talk to you. I'm with the F.B.I.

MASE : Yeah.

STEVE : You don't have to make any statement. Any statement you make can be used against you in the court of law. Sit down. Ah sit down here for a second. Paul.

DWYER : Hmm. Hello.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
V.	:	CRIMINAL NO. N-76-91
EDWARD V. MASE and EDWARD R. GIANOTTI	:	

TRANSCRIPT

TIME : 5:38 P.M. LOCATION: 1 Hill Street, Branford, Connecticut

DATE : June 22, 1976 PARTIES : PAUL DWYER, EDWARD R. GIANOTTI

DWYER : Hello

GIANOTTI: Yeah.

DWYER : Eddie

GIANOTTI: How'd you make out?

DWYER : Ah, I didn't pay him.

GIANOTTI: Oh my God.

DWYER : I'm hiding.

GIANOTTI: I just wanted to know because I was worried for you.

DWYER : You're worried. How about me.

GIANOTTI: Nothing.

DWYER : What's he gonna do to me you think?

GIANOTTI: I don't know. I tell you the truth.

DWYER : Really.

GIANOTTI: Yeah.

DWYER : Bodily harm, maybe.

GIANOTTI: That's why I tried to call you this morning to see how you were doing.

DWYER : Yeah.

GIANOTTI: I couldn't get to you. Did they call you?

DWYER : He called, yeah.

GIANOTTI: You didn't call him back?

DWYER : No.

GIANOTTI: What happened? You got stuck.

DWYER : I got jammed up yeah. You know. Will they do any bodily or break an arm or anything? I don't know what the hell to do. I feel like running away.

GIANOTTI: Ah, I would call him if I were you.

DWYER : Yeah

GIANOTTI: You know.

DWYER : Yeah.

GIANOTTI: Call him and see what, ah see what the hell you could do. I'm trying to think. Oh, boy. The only thing is that if they get a what do you call it for you. You know what I mean?

DWYER : A who what?

GIANOTTI: If they get a loan for you?

DWYER : A loan yeah.

GIANOTTI: Yeah, they'll, you gotta pay the juice.

DWYER : Ah, ah, ah, is it a lot of lot of money? The juice.

GIANOTTI: 20 percent

DWYER : 20 percent.

GIANOTTI: Yeah.

DWYER : What do I pay that weekly?

GIANOTTI: Yeah, either they either they can do it two ways. If they can do it at all. You pay 20 percent.

DWYER : That's too much money.

GIANOTTI: That's what they get.

DWYER : What's gonna happen to me now then?

GIANOTTI: Or ypu pay 5 percent a week.

DWYER : On the unpaid balance.

GIANOTTI: No, you pay 5 percent until you ah until you ah pay off the whole thing.

DWYER : Eddie I tried everything. I went to my parents. I went everywhere.

GIANOTTI: Ah, I think that's your best move though.

DWYER : Really?

GIANOTTI: This way here there's . . . sure no pressure. If they give you the what do you call, you follow me.

DWYER : Yeah.

GIANOTTI: If they give you a loan. If they c[illegible]t it for you. You follow me.

DWYER : Yeah.

GIANOTTI: You pay 5 percent.

DWYER : Yeah.

GIANOTTI: A week.

DWYER : I'll be paying 5 percent for my whole life then.

GIANOTTI: No until you get it this way here you you it gives you time.

DWYER : Oh I see what you mean.

GIANOTTI: It gives you a lot of time.

DWYER : That's a duce a week. That's 200 dollars a week.

GIANOTTI: Yeah.

DWYER : Oh what are you crazy? It gives me time. I barely got that.

GIANOTTI: What do you mean, 200?

DWYER : Yeah.

GIANOTTI: Yeah, but at least, at least this way here you got time to juggle.

DWYER : That's true.

GIANOTTI: You know you don't know what's gonna happen now.

DWYER : That's true.

GIANOTTI: You know what I mean.

DWYER : Yeah, they won't do any damages to me will they?

GIANOTTI: What to you?

DWYER : Yeah.

GIANOTTI: They're, if their crazy enough.

DWYER : Really?

GIANOTTI: Oh yeah, there's no doubt about it.

DWYER : Well the girls said at the office that he was there in my office with a guy with brownish hair and another guy with a big belly.

GIANOTTI: Oh Christ. Joe Rubin.

DWYER : Joe Rubin, yeah, who the hell is he?

GIANOTTI: Yeah, he's a maniac.

DWYER : He's a maniac.

GIANOTTI: Yeah.

DWYER : Is he a muscle man?

GIANOTTI: Yeah.

DWYER : Does he do bodily harm.

GIANOTTI: Hmm, yep.

DWYER : Normally.

GIANOTTI: Oh without questions asked.

DWYER : Do they have guns?

GIANOTTI: No, they don't use that kind of thing yet.

DWYER : No guns yet.

GIANOTTI: No, I, I would say this Paul.

DWYER : Yeah.

GIANOTTI: I would do this. I'm telling you this is gonna be your safest way out of it.

DWYER : Yeah.

GIANOTTI: Talk to them. Don't run from them. That's the worst thing you can do.

DWYER : Yeah.

GIANOTTI: Call him, don't tell where you are. Call him.

DWYER : Yeah.

GIANOTTI: And ah and I'm gonna try to get a hold of him now.

DWYER : Yeah.

GIANOTTI: He may be home.

DWYER : Yeah.

GIANOTTI: Ah, you were suppose to call him at what time?

DWYER : 2 o'clock.

GIANOTTI: And you didn't call him?

DWYER : No.

GIANOTTI: Okay, let me see if I can get a hold of him in the meantime.

DWYER : Yeah.

GIANOTTI: All right. You stay by the phone.

DWYER : [illegible]t.

GIANOTTI: Okay.

DWYER : Okay.

GIANOTTI: Now if I can talk to him into that

DWYER : Yeah.

GIANOTTI: Do you go along with that?

DWYER : Yeah.

GIANOTTI: But Paul believe me if they do it.

DWYER : If they do that what? Give me the money?

GIANOTTI: Give you the money.

DWYER : Yeah.

GIANOTTI: Understand.

DWYER : Yeah.

GIANOTTI: And if you don't pay the what do you call the juice.

DWYER : Yeah.

GIANOTTI: They'll kill you.

DWYER : They'll kill me.

GIANOTTI: They'll, they'll, they'll break both your arms and legs. Believe me when I say it.

DWYER : Both my arms and legs. What are you crazy?

GIANOTTI: That's the way they they don't care.

DWYER : I bruise easy Eddie.

GIANOTTI: I know this is the only I mean if you can't raise it anywhere.

DWYER : Yeah.

GIANOTTI: That kind of money.

DWYER : Yeah.

GIANOTTI: This is the only way that you can get yourself out of this mess.

DWYER : It's a big mess that's for sure.

GIANOTTI: You know what I'm trying to say?

DWYER : I'll tell you Eddie. I wish you never bopped in the office that's for sure.

GIANOTTI: I just, you know, I wish you never bet like that.

DWYER : Yeah, yeah. What happened to Murphy? What happened to him?

GIANOTTI: Nothing. He held me up for the money.

DWYER : Did he pay you yet?

GIANOTTI: No.

DWYER : He never paid you either, huh?

GIANOTTI: No, he's another one.

DWYER : Oh, why doesn't he go after him then?

GIANOTTI: That's next.

DWYER : That's next?

GIANOTTI: Hmm.

DWYER : Well I don't want to be murdered Eddie that's for sure.

GIANOTTI: Of course not. I would say I would think this would be your best deal Paul.

DWYER : Yeah.

GIANOTTI: This way here at least I'm sure you could juggle that kind of money.

DWYER : Yeah.

GIANOTTI: Am I right or wrong?

DWYER : Yeah, no.

GIANOTTI: What?

DWYER : Who would do that?

GIANOTTI: What?

DWYER : Murder me. Would it be Ruby?

GIANOTTI: I don't know. That's the thing.

DWYER : Yeah.

GIANOTTI: I don't know what who and what if they would their you know.

DWYER : Yeah.

GIANOTTI: I'm just saying.

DWYER : Yeah.

GIANOTTI: They're nuts enough.

DWYER : They're crazy people.

GIANOTTI: Oh yeah. With these people you don't fool around.

DWYER : Where are you now? Are you home.

GIANOTTI: Yeah.

DWYER : I've been trying to call you all afternoon.

GIANOTTI: Yeah, the phones we've had trouble with this phone here.

DWYER : Yeah.

GIANOTTI: He just fixed it now.

DWYER : Yeah, all right.

GIANOTTI: Cause ah

DWYER : I'm not gonna be home.
But I'll give you a call in another hour.

GIANOTTI: Call me in an hour.

DWYER : I will.

GIANOTTI: All right.

DWYER : Okay.

GIANOTTI: Let me see if I can get to him. Now, would you approve of them?

DWYER : Be a probable, yeah.

GIANOTTI: Huh?

DWYER : Yeah.

GIANOTTI: I mean Pualy believe me you can't say yes to these people and then you know.

DWYER : What happens if I miss a week, what happens then?

GIANOTTI: No, in another words see if you wanted the 4,000 let's say.

DWYER : Yeah.

GIANOTTI: All right now they tack on the juice.

DWYER : Yeah.

GIANOTTI: Which would be 800.

DWYER : Yeah.

GIANOTTI: All right, so that's 4800.

DWYER : Right.

GIANOTTI: Okay now you pay, on that you pay 400 a week.

DWYER : 400 a week.

GIANOTTI: Right.

DWYER : I might just make a deal pay him that pay it off with out no juice then. 400 a week you know.

GIANOTTI: You don't understand what I'm saying.

DWYER : Yeah.

GIANOTTI: If I'm just saying that's a 20 percent loan.

DWYER : Yeah.

GIANOTTI: Now, if you took 4 if they took 4.

DWYER : Who loans?

GIANOTTI: Huh?

DWYER : Who loans out this money?

GIANOTTI: I don't know. I'm trying to see if they do that.

DWYER : Yeah.

GIANOTTI: You follow me?

DWYER : Yeah.

GIANOTTI: If you pay them okay?

DWYER : Yeah.

GIANOTTI: Ah, a 5 percent a week.

DWYER : Right.

GIANOTTI: All right, there's no juice.

DWYER : Hmm.

GIANOTTI: All right you just pay him 200 a week.

DWYER : Right.

GIANOTTI: Until you get the money.

DWYER : Yeah.

GIANOTTI: So in another words that gives you a lot of time.

DWYER : But that 200 dollars a week doesn't apply to anything right?

GIANOTTI: No.
But let's say you but let's say you have a good week or you you find the money somewhere within the week.

DWYER : Yeah.

GIANOTTI: You only pay 200

DWYER : I see.

GIANOTTI: And there's no pressure.

DWYER : Yeah.

GIANOTTI: You understand what I'm saying.

DWYER : Yeah.

GIANOTTI: I'm just looking at it that way. This way they're gonna find you and your gonna get hurt.

DWYER : I'm gonna get hurt.

GIANOTTI: Oh yeah, there's no doubt about it. I know that. I'm afraid to call him myself. But I gotta call him because I wanna see what happened.

DWYER : Yeah, okay, okay Eddie.

GIANOTTI: What do you want me to tell him.

DWYER : Don't call him until another hour. All right. I want to make some more telephone calls, okay.

GIANOTTI: If you make some calls or something.

DWYER : I'll call you back in one hour

GIANOTTI: All right.

DWYER : All right.

GIANOTTI: Bye

DWYER : Bye

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

- -x

UNITED STATES OF AMERICA

- versus - Criminal Action

EDWARD V. MASE, et al., No. N-76-91

Defendants.

- -x

United States Court House
New Haven, Connecticut
September 30, 1976

B e f o r e:

Hon. JON O. NEWMAN, U.S.D.J.

A p p e a r a n c e s:

For the Government:

PAUL E. COFFEY, Special Attorney
450 Main Street
Hartford, Connecticut

For the Defendant MASE:

JACOB D. ZELDES, Esq.
355 State Street
Bridgeport, Connecticut

Special Appearance:

CARTER LaPRADE, Esq.
205 Church Street
New Haven, Connecticut

ANDREW L. HOULDING, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

BY THE CLERK:

Q. Your address?

A. New Haven, Connecticut.

DIRECT EXAMINATION

BY MR. ZELDES:

Q. What is your occupation, Mr. Houlding?

A. I'm a reporter for the Journal-Courier, New Haven.

Q. In connection with your duties for that publication have you been writing articles that appeared in your paper concerning United States versus Mase and United States versus Gianotti?

A. Yes, I have.

Q. And in connection with that have you talked to certain governmental officials?

A. Yes, I have talked to certain governmental officials.

Q. Now, prior to the indictment in this case did the United States Attorney advise you that the grand jury was expected to return an indictment at a certain time?

A. If you're referring to a specific article, could I look at the article that you are referring to?

A. I subpoenaed all your notes, records and everything. You can look at the copies that you brought.

A. Yeah, but I don't have them right here with me.

MR. LaPRADE: I'll place it in front of Mr. Houlding.

MR. ZELDES: First of all, I'd like to ask him if he needs to refer to any documents. He can refer to them, but I'm just asking if that's true.

THE WITNESS: Well, I feel like -- I want to limit my remarks to published material. I have talked to lots of people in connection with my work and it's --

Q. I'm limiting my question to government officials, either the United States Attorney, his office, Strike Force Attorneys, agents of the Federal Bureau of Investigation or any other governmental investigatory agencies.

A. Uh-huh.

Q. You understand that?

A. Uh-huh.

Q. My question was: did the United States Attorney advise you in advance of the return of the indictment in this case that an indictment was expected?

A. Yes, I believe he did.

Q. When did that conversation take place?

A. Well, it was the day that the grand jury was convened on the -- on the Mase case.

Q. Can you tell us everything --

A. July.

Q. I'm sorry. Excuse me, Mr. --

A. I think it was July 12th.

Q. Pardon?

A. I think it was July 12th.

Q. Can you tell us, please, everything that that offical, the United States Attorney, advised you concerning this case?

M R . LaPRADE: Your Honor, now we're at the problem that was anticipated. This question may relate to information that was unpublished, and if I may be heard further on it, it does not relate at all to the merits of the case, the guilt or innocence of the defendant and there's been, I believe, an insufficient showing that alternative sources have been explored.

THE COURT: It's far from clear at this point that any purpose would be served by recounting the entire conversation. If there's something specific you want to know, perhaps you can frame a question that gets at it.

Q. What exactly did Mr. Dorsey -- was it -- tell you about Mr. Mase?

MR. LaPRADE: Same objection, your Honor.

THE COURT: If there's something you claim that was disclosed from the government improperly and you're trying

to attribute it to the government, I would have thought you could highlight that, but just to find out what was said generally --

MR. ZELDES: If your Honor please, what I think is one important factor --

THE COURT: -- and he's been willing to answer that. The difficulty comes when you ask him an open-ended question. Now, you don't have to worry about leading questions. So if you want to know "Did he tell you a certain thing," that you claim should not have been disclosed, I don't see why you don't ask it.

MR. ZELDES: Let me frame it this way, maybe it will satisfy Mr. Houlding and your Honor, also.

Q Were you advised by any government agent concerning the use of the phrase "organized crime'?

THE COURT: You mean as to whether he should use that phrase?

MR. ZELDES: No. Whether or not --

THE COURT: I don't understand the question.

MR. ZELDES: -- any of the defendants in this case were connected with organized crime.

MR. LaPRADE: Your Honor, I make the same objection. I think if Mr. Houlding is -- he's willing to testify as to material in the articles, who -- the phrase "Reputedly a

member of organized crime" does appear in the articles, but I wonder if the unpublished source makes any difference. Certainly, only published material relates to a claim of prejudicial pretrial publicity, and with regard to a claim of prosecutorial misconduct, it's not germane to the merits of the case and there's been no showing that alternative sources have been called in question other than the one Special Agent of the FBI. I think under Brans versus Hayes those are two essential elements to penetrate confidentiality.

THE COURT: Well, are we really in the area at the moment of a confidential source. I just wonder if really this reporter want to join issue on this particular point. He said the U. S. Attorney talked to him, told him there was going to be an indictment returned. I'm not so clear what's so confidential.

MR. LaPRADE: That was published.

THE COURT: It doesn't seem we're really getting into very much that's confidential. The pending question is a very narrow one. He wants to know in telling him about that indictment that was expected did he make a reference to the fact that this suspect had some connection with organized crime.

MR. COFFEY: Your Honor, the government has no objection to the witness answering. We don't take the position, of course, of the newspaper, but we have no objection ourselves

to the question.

MR. ZELDES: Well, your Honor, I should perhaps have objected earlier. I'm not certain that the witness is entitled to counsel at this point.

THE COURT: Well, I'm satisfied he is, so we don't have to waste time with that.

MR. LaPRADE: If Mr. Houlding can answer the question without revealing a confidential source, he should do so.

THE WITNESS: Would you repeat the precise question?

THE COURT: What he wants to know -- you have already told us the U. S. Attorney told you that an indictment against Mr. Mase was expected.

THE WITNESS: I think that what -- my -- my precise conversation with Mr. Dorsey was -- I had observed a grand jury convened that day. That afternoon I called Mr. Dorsey's office to ask if in fact an indictment had been returned. Mr. Dorsey's comment, I believe, was -- words to the effect that, "Not today. I expect it will be -- it will be in the morning." I think that was pretty much what was published.

Q Now, did Mr. Dorsey or any other federal official advise you that any of the defendants in this case were

connected with organized crime?

A. I feel that I have to draw the line there on -- because it's a very broad question about possible sources of information.

THE COURT: He's not asking you about other sources, he's not trying to find out who are allthe people you talked to, who are your confidential people, he's asking a very narrow question. When the U. S. Attorney had a conversation with you, told you there was going to be an indictment expected the next morning in reply to your inquiry, he just wants to know did he make any reference to the suspects being involved with organized crime.

THE WITNESS: Well, I think that his question went beyond that.

THE COURT: Well, that's the question I want to know. Maybe he's not entitled to anything beyond that.

THE WITNESS: I'll state for the record that Mr. Dorsey did not at all tell me that the defendants -- prospective defendants were members of any organized crime.

Q. That was the Judge's question. Do you understand the question that I asked?

A. I do understand the question that you asked.

Q. Will you answer?

A. I decline to answer.

THE COURT: What are you asking him? I thought that's what you wanted to know. What's the next question.

MR. ZELDES: Your Honor limited it to Mr. Dorsey. My question was who are the -- who, if any, were the government personnel who advised him that the defendants were connected with --

THE COURT: Well, there's no indication that the government personnel advised him of that.

MR. ZELDES: I'm asking him that. Did the government -- he refused, I asked him to identify it and he refused to identify. That's the point we broke down, if you Honor please. Perhaps that question ought to be read again.

MR. COFFEY: In any event, I would have an objection to --

THE COURT: Well, let's see if we can get at it this way. I can understand that if you have really confidential sources you have a reluctance to disclose them and at some point there may be an issue of privilege. Is it possible for you to answer this question. Whether or not a reference to the suspects in this case, in the Mase case, as having any relationship to organized crime, whether that reference was made to you by a government official, federal government official?

THE WITNESS: And the federal government official would include?

THE COURT: Prosecutors, FBI agents, Strike Force Attorneys.

THE WITNESS: That's a question that I would be reluctant to respond to.

THE COURT: As to whether your source was governmental or not?

THE WITNESS: Exactly.

THE COURT: Without identifying who the person is?

THE WITNESS: Exactly. Because whenever I start to -- to restrict the areas in which I might have or might not have sources, I -- it's a process of elimination. I feel that I've been --

THE COURT: Doesn't there have to be a little reality to this? Obviously, if I ask you a status that's occupied by two people and I say was it one of those two, that begins to narrow it down, but is it realistic to think that there's a narrowing that's going to compromise your sources when you're asked whether or not a person who made that statement is part of the federal government?

MR. LaPRADE: Your Honor, if I may be heard just briefly on this? I think there is in this respect -- I believe Mr. Zeldes intends to call other witnesses and ask them if they in fact spoke with Mr. Houlding, and of course he's entitled to do that and should do that under Brandsberg

Handson.

THE COURT: I know. But do we have to call every employee of the U. S. Attorney, every employee of the FBI. You know that the answer is no. If the answer is yes, maybe Mr. Zeldes then has to pursue other things. I can appreciate the paper has some problems and has got some claims to be made. On the other hand, I don't think that they really need to take unnecessarily rigid positions that preclude the elimination or possible elimination of rather serious allegations of misconduct, and I don't know why these issues have to be pressed to the limit just because somebody comes in and says, "Well, there's a great freedom of the press issue." I haven't asked him the name of a person, I haven't asked him anything that pinpoints a person, that lets the cat out of the bag, so to speak.

MR. LaPRADE: Yes, sir.

THE COURT: Simply whether or not this reference was made by anybody who works for the federal government. That still leaves a vast establishment of some two million employees.

MR.LaPRADE: Your Honor, it may well be, but I believe Mr. Houlding may feel -- and from what I have heard of the case -- that the cast of characters in this case is not that large and although federal bureaucracy does sound like a big institution, as it relates to this case it's not so large.

THE WITNESS: May I add that in pursuing my work it's very difficult for me and it becomes increasingly difficult for me to work with any governmental or nongovernmental officials or people who are on the other side of the -- of the government, from the government, to have any kind of conversation with them except those that are absolutely restricted to what's already on the record or about to be made part of the record.

MR. COFFEY: Your Honor, I feel the government's in the middle of this and I think we ought to at least state our position clearly. We don't have objection to the witness answering that question, and just so we're clear what we're talking about, I think also we ought to try to narrow down whether this information, if it was given from anyone, came before or after this particular case. It may possible have come a year or two ago and then have been put in as a filler for who this person is at the time the case was returned, that's not even clear, so the claim is someone connected with this case has generated publicity. I don't even know if this witness, if he could answer, would say it came after this particular case became public.

THE COURT: Well, we're not even at the issue of when or who, we just want to know -- the question is did that reference come from somebody from the federal government. You feel you can't answer that question?

THE WITNESS: I think that if -- as a practical

matter it's possible that I approached people in -- in various areas and said, "Is this an organized crime case," or -- or put it in that context myself, and had various degrees of confirmation from -- from people.

THE COURT: All we want to know is whether any of the people who confirmed that to you worked for the government.

THE WITNESS: And that's where I -- if I -- I feel that I'm -- that my work becomes much more difficult if I'm forced into disclosing that because in the future whenever a case comes up that I want to talk to someone in the government they're going to be very, very reluctant and in fact likely to refuse precisely because of this kind of questioning.

THE COURT: Well, let's find out what other questions you have so we'll know really what's at issue here.

MR. ZELDES: You want me to proceed with some questions, if I may, your Honor?

THE COURT: Yes.

BY MR. ZELDES:

Q Could I go back, Mr. Houlding, to that conversation you had that's reported in your July 14th, 1976 issue with the United States Attorney for the District of Connecticut? Did Mr. Dorsey tell you that the complaint before the magistrate was dismissed on quote technical grounds?

A. Yes. I believe that that is directly attributed to Mr. Dorsey.

Q. Now, in that same article you said -- you reported the activities of people invoking privileges before the grand jury, invoking their privilege under the Fifth Amendment, do you recall that portion of the story?

A. Yes, I do.

Q. And you say, "According to sources close to the case"?

A. Yes.

Q. Were you inside the grand jury room, sir?

A. No, I wasn't.

Q. Did you have any type of eavesdropping equipment?

A. No, I did not.

Q. To listen to the grand jury?

A. No, I did not.

Q. Would you tell me please who your source was close to the case that told you what transpired inside the grand jury room?

A. I would respectfully decline.

MR. ZELDES: May we add that to -- that area of questions, your Honor, holding back, and I will proceed further although I'm not waiving our claim to have an answer?

Q. Is it true, sir, that Mr. Dorsey in addition to what you've also already reported to the Judge said that Mr. Mase's

arrest was dismissed Monday because federal Organized Crime Strike Force Attorney Paul E. Coffey was not prepared to proceed against Mase at that time but that the dismissal has no effect on the continuing investigation of Mase's alleged role in the case?

A That is correct.

Q Can you tell me, sir, with respect to your article entitled Man Denies Mase Case Involvement who were the federal sources that you stated as follows: "Federal sources indicate the Strike Force is hoping to make further inroads into the alleged organized crime activities in the Greater New Haven Area?

MR. LaPRADE: Could I have the date on that article, please? Mr. Zeldes, do you have any objection to my handing the article to Mr. Holding?

MR. ZELDES: I do not.

A It got cut off the bottom of this. It's right on the end of the article.

Q I'm sorry. I didn't hear you.

A It's right at the end of the article on your copy? Is that where -- where it appears? The reference you made?

Q I'm sorry. No. It's in the middle of the article. It says: "Federal sources indicate the Strike Force is hoping to make further inroads into alleged organized crime activities

in the Greater New Haven Area," and that is a clipping under the headline --

A. O.K. I see it.

Q. "Man Denies Mase Case Involvement," and I don't have the date of that. Do you have the date of it?

A. Well, it was last month, I believe.

Q. It's under your byline --

A. Yes.

Q. -- isthat correct?

A. Yes.

Q. And I ask you, sir, who are those federal sources?

A. I would decline to answer that one.

Q. Now referring to clipping of July 15th where it is said, "He has been described as a significant quote organized crime figure in this area." Would you tell the Judge, please, who describe that for you?

A. Well, I think that you could find that description in other articles in our morgue dating back to about 1972 when Mr. Mase was -- entered a guilty plea to a firebombing charge arising out of a case in West Haven and I believe that my initial information about that came from those articles --

Q. You were --

A. -- in our files.

Q. Excuse me. I didn't mean to interrupt you MR. Houlding.

I subpoenaed you today to bring with you all your notes, memoranda, records relating to this, did you bring those with you concerning that background information?

A. I have -- I think you have a copy. It's a case -- story here. "Three to Five Years Given in Firebomb Case."

MR. LaPRADE: You have a copy of that.

Q. May I s that copy, please? These are Xerox copies of old newspaper articles, is that correct?

A. That's correct.

Q. And is it your testimony that the reference I just read to you about him being -- organized crime came from your old morgue?

A. Some of the information. For instance, in an article dated May 25, 1972, there's a paragraph which states, "Both Mase and Canestri have been described by law enforcement authorities as important figures in organized crime in that area, particular in regard to gambling."

Q. And that came from your morgue, is that correct?

A. That's correct.

Q. Now, can you tell us, during the course of this current case which officials, if any, described Mr. Mase as a member of organized crime?

MR. COFFEY: He hasn't said any official did.

MR. ZELDES: I said which if any, your Honor.

If there are none --

THE COURT: Well, it would help if you would first ask the preliminary question so we know whether there's any problem.

Q As a preliminary question, Mr. Houlding, have any government officials ever referred to him as "organized crime" or wordst to that effect -- Mr. Mase?

A Well, I think that I have discussed with government officials in various capacities this case and I probably have categorized it as "an organized crime case," and they have probably given me reason to believe that they concurred. The case, in fact, was brought by the -- Mr. Coffey's Strike Force which is I think something like the Strike Force Against Organized Crime and Racketeering," and I think that the name of his office gives rise to that sort of characterization.

Q Now, my question was have members of the government referred to Mr. Mase as "organized crime"?

A I don't believe that any official source, that is, an on-the-record source, has made such a direct characterization.

Q Now, what about the off-the-record source?

A There I think we're getting into the area which I'm respectfully declining to discuss.

Q Are you respectfully declining to answer whether any government official has referred to Mr. Mase as an "organized

crime figure" or words to that effect?

A Yes.

THE COURT: Well, is there any article that you are concerned about that there is some quote that says a federal official used that label?

MR. ZELDES: Well, it's the quote I read him: "Federal sources indicate the Strike Force is hoping to make further inroads into alleged organized crime activities."

THE COURT: Yes. I assume the law is interested in making further inroads.

MR. COFFEY: It's a public record we're doing it, your Honor. It's our job.

MR. ZELDES: Except when it's a discussion of the Mase-Gianotti case and you say "further inroads." It seems to me that that's a characterization.

THE COURT: Well, we're not going to reach to read into things characterizations. You confronted him with the label that he had been described as an organized crime figure.

MR. ZELDES: That was a different article, if your Honor please.

THE COURT: Is there any claim that there's an article that says a federal official used that label?

MR. ZELDES: No, your Honor.

THE COURT: All right.

MR. ZELDES: That's what I'm trying -- I'm not -- I can't claim it or disclaim it. He refuses to answer.

THE COURT: We are only interested in, first, whether there's something in an article that alerts you to it, we're not holding this hearing to just let you ask him any questions that may occur to you.

MR. ZELDES: For example, if your Honor please, if he writes and article and says he has been described as a significant organized crime figure --

THE COURT: And he's explained --

MR. ZELDES: -- in this area.

THE COURT: -- where that came from.

MR. ZELDES: Not completely, your Honor. He's taken the privilege with respect to that.

THE COURT: He's given his explanation. If there's no article that says a federal official branded him that, then we don't have to pursue that any farther. He told us where the public record is that was available to him to use for the article. You called it to my attention. Let's move on.

MR. ZELDES: On the second article, if your Honor please.

THE COURT: Put to him another question. Let's move on.

MR. ZELDES: I have no other specific questions, your Honor until those that are answered -- I don't know if you want me to mark the articles yet or not. We can do that perhaps after lunch.

THE COURT: Would you just ask again the question about the grand jury, I'm just not clear.

MR. COFFEY: I'm going to try to clear that up myself if he's through, your Honor.

THE COURT: I just don't know what the question is that you're asking him about that.

MR. ZELDES: I asked him what was his source for the assertion that Martin and most of the others invoked their Fifth Amendment privilege and refused to answer the grand jury questions. I should also ask another question if I may, Judge.

BY MR. ZELDES:

Q Who is the source that advised you that the man was told he would be physically harmed unless he paid about $7,500? The threat was reportedly made in min-June.

MR. LaPRADE: May I have the date of that article?

MR. ZELDES: The date of what?

MR. LaPRADE: The article.

MR. ZELDES: Oh. July 14th, 1976, page 1.

A You mean where it says, "according to an official complaint filed with the federal magistrate"?

Q No. You state this in your article of July 14th, 1976, "According to sources, the man was told he would be physically harmed unless he repaid about $7,500. The threat was reportedly made in mid-June." Could you tell me, please, who was that source?

A I think we're looking at different articles. July 14th doesn't --

MR. LaPRADE: May I see the article that you have?

MR. ZELDES: Yes. The lead article on the Journal-Courier.

MR. LaPRADE: Show me that.

MR. ZELDES: I don't have the newspaper itself, I have a Xerox that's attached as Exhibit B to the motion which reads -- the lead article in the paper reads, "In Area Loanshark Case Indictment Due Today," and on the --

MR. LaPRADE: He didn't write that article.

MR. ZELDES: Well --

MR. LaPRADE: Ask him.

Q Did you write that article?

A No.

Q Do you know who wrote that article?

A Not precisely, but it's -- it looks to me like a sort of rewrite basically of my story with a few qualifiers thrown in.

Q Did you have sources that indicated to you that the man was told he would be physically harmed unless he repaid about 700 -- $7,500 as stated in that article?

A Yeah. The source was the official complaint filed with the magistrate which I got a copy of the day I wrote about it.

Q Did you have any discussions on that subject matter with any officials of the government?

A As a matter of fact, I just don't remember.

Q At any rate, you're not refusing to answer that one?

A No. For the record, though, I think I would.

MR. COFFEY: Shall I ask the question that your Honor had in mind about the grand jury?

THE COURT: Yes.

MR. ZELDES: I don't have any further questions at this time. I don't waive my answers -- my answers or my right to continue or waive any disclosures on those questions.

MR. COFFEY: May I ask a question?

THE COURT: All right.

MR. COFFEY: Are you through, Mr. Zeldes?

MR. ZELDES: No, I'm -- I'm finished at this point, but I'm not through. You may question if you want with that reservation.

MR. COFFEY: Are you through with this witness?

MR. ZELDES: No, I'm not through with the witness.

MR. COFFEY: I'll wait until he's through with the witness.

MR. ZELDES: The Judge hasn't ruled yet. I'm through for the time being.

THE COURT: If you want to cross-examine, go ahead.

CROSS-EXAMINATION

BY MR. COFFEY:

Q Mr. Houlding, your article of July 14th, 1976, concerning witnesses taking the Fifth before the grand jury, did you state in your article that the reports were from sources close to the subpoenaed witnesses?

A Yes.

Q And are you able to tell the Court if the sources who told you that the Fifth Amendment had been taken by witnesses were the witnesses themselves?

A Well, I think that I would stick to the wording of the article which is sources close to some of them. I think that to narrow it down further might get into the same area on the other side of the fence.

THE COURT: Let me ask you this. Are you able to tell us whether those sources do or do not include government officials?

THE WITNESS: On that particular point they definitely do not include government officials.

MR. COFFEY: That's really all I have, your Honor.

THE COURT: All right.

MR. ZELDES: Except I will ask the witness this:

Q Mr. Houlding, unless your attorney interjects an objection, tell the Court if I or any person in my office or any FBI agent that you know is connected with this case told you that any of the defendants in the case, the witnesses, were organized crime figures or if this investigation involving this case involved organized crime activity?

MR. ZELDES: If your Honor please, before the witness answers I think that either he or his attorney should advise him that he can't open the door part way.

THE COURT: Well, he has an attorney here, Mr. Zeldes, and I don't really think that you have to make legal arguments on his behalf when he has very able and experienced counsel right here. If you have some objection on behalf of your client, I will hear it, but I really don't think --

MR. ZELDES: That is on behalf of --

THE COUERT: -- on behalf of your client -- you want to be sure the witness gets legal advise.

MR. ZELDES: No, no. I want to make certain

that it's not in any way a waiver so that the witness --

THE COURT: Are you raising this on behalf of your cleint?

MR. ZELDES: I'm raising it on behalf of my -- on behalf of my client with respect to the examination of this witness on the ground that we're entitled to have answers to our question and that a witness cannot just slectively answer questions.

THE COURT: Well, that problem will come up if there is any sort of waiver and you claim the right to some answer. It is not the situation at the moment.

MR. LaPRADE: I am going to object to it, your Honor. I think the question is too broad and poses difficulties for us.

THE COURT: All right. Put another question, then.

MR. ZELDES: That's it.

MR. COFFEY: That's it? I don't see how I can go any further than Mr. Zeldes.

THE COURT: Well, on the present record I am going to excuse the witness.

THE WITNESS: Thank you, your Honor.

THE COURT: All right. Now, you have additional testimony to present?

MR. ZELDES: Yes. Very brief and not the same issue.

THE COURT: Well, does it involve reporters who are here waiting?

MR. ZELDES: Yes. Let me understand, your Honor. Are you ruling that the witness is finished, he doesn't have to answer?

THE COURT: No. I just said on the present record he's excused. I will determine subsequently whether there's some basis for pressing the matters that have been left open.

MR. ZELDES: I'm sorry, I wasn't clear. Could I put on the other reporter, your Honor? I will be very brief and I don't anticipate this kind of -- Channel 8?

Monday and I request specifically for one, the affidavit itself or the material itself or in the alternative your ruling as to whether there's anything exculpatory in the materials that were submitted to you last Monday.

In connection with the proposal under Brady that whenever possible the defense should ask specific -- for specific exculpatory material I would inquire of the government whether or not the witness Dwyer, the alleged victim in this matter, was a previous paid informer for the government or previous informer without pay, I should say, also.

If your Honor please, there are going to be some evidential rulings, I am not sure how familiar you are yet with the file and the potential problems, one of them deals with the highly -- what we claim is the highly prejudicial tape recording of the co-defendant Gianotti after the defendant Mase was restrained of his liberty but before the defendant Gianotti was restrained of his liberty. We think that that's something that should be resolved in the absence of the jury and we request at this time that it so be resolved in the absence of the jury, the admissibility question , the foundation question and also that the foundation, admissibility questions of the other tape recordings be decided in the absence of the jury so that it just doesn't pop up while the jury's in the room. That's a request that we have in that regard.

since we had no way of knowing who would be picked, it's the general population and you can't get a fair trial. Now that we have picked twelve people and told them "don't read the articles," you're saying that that's unfair.

Now, I don't begrudge you the ingenuity of arguing both sides of the issue, but I just say that to indicate why I don't think I need to succumb to the double-edged argument.

MR. ZELDES: But at any rate, I so request it. I believe those are the points that I wish to raise.

THE COURT: All right.

MR. COFFEY: With respect to the ex parte affidavit, when the Court reads it we would submit that the Court will and should conclude that it ought not to be disclosed to the defense for the reasons stated therein as to why the government did not proceed with the preliminary hearing.

With respect to exculpatory material we feel we have already complied with Brady. The one area where there was some question in our mind was the test -- were the statements of Edward Gianotti which were given to the Court. It will take only a minute, but I should put on the record what other materials we have given to the defense today.

I have produced the grand jury testimony of Richard Murphy of July 13th, 1976. The inventory of Mr. Mase's

arrest. Mr. Dwyer's appointment calendar which reflects a date, contact with Mr. Zeldes. A Xerox copy of a note that Mr. Mase left with Mr. Dwyer on June 15th, 1976. Photographs. I don't think there's going to be any problem with -- with photographs we've supplied. I won't list each one. Grand jury testimony of Cesar Canestri given on July 13th, 1976, pages 18 through 34. Surveillance report of FBI agents on June 22nd 1976. Arrest reports of Mr. Mase and interviews of Mr. Rubo and Mr. Canestri, all on June 22nd, 1976. Reports of Agent Puckett as to what what electronic measures were undertaken on June 22nd of this year. FBI interviews of Cesar Canestri, Ted Sale, Joseph Rubo, Richard Murphy and Edward Papagoda.

We object, your Honor, to stating whether or not Paul Dwyer was or was not a previous paid government informant. We neither affirm nor deny that. To some extent the materials given to the Court may help the Court resolve whether the defense would be entitled to a government answer on that issue, and unless and until there's a showing that this particular area becomes relevant with respect to Mr. Dwyer's credibility we would contend that we ought not to disclose such information until the Court is in a better position to evaluate whether such an answer is necessary.

That may sound like doubletalk in the sense that I don't want to affirm or deny to what extent an answer would

be given, but if it has to be given, I don't believe the Court at this time can -- is in a position to give that -- make the Court make such a -- the Court is not in a position to make the government give such an answer until it reads the materials given to it.

THE COURT: Well, I certainly will look at them, but it would seem that to have some relevancy to credibility, if a principal accusing witness has in the past been an informant for the government, he has some likely anticipation of continuing that status, and that does have a bearing on his credibility. Now, maybe there's something in these papers eliminates that possibility altogether.

MR. COFFEY: I don't think we're going to assert that it does. What we're simply asking the Court is not to make a ruling without having the chance to look at what's in camera so that if the Court does require an answer it will be aware of the government's problem and what it can say and what it can't say.

If that's not clear it's because the in camera document is not public.

I'd like to ask the Court -- the defense through the Court -- if the defense contests the accuracy of the government transcripts. I think in United States versus Chiarizzio the Second Circuit indicated they ought to do that so we won't

I think there is legitimacy to the request for benefits conferred on a government witness who is now going to be an accusing witness in a criminal case.

MR. COFFEY: Fine.

THE COURT: And that is the extent of the disclosure I am ordering at this time.

MR. ZELDES: You're ordering them to tell us whether or not there were any benefits or what the benefits were.

THE COURT: And if so, what the benefits were.

MR. ZELDES: And if so, what the benefits were and when they were given?

THE COURT: Well, I don't know that they have to give you a timetable on it that might assist you in learning what information was divulged. That seems to me an entire different matter. I don't know in what form they choose to give it, whether they do it by bracketing a beginning and an ending point or something like that. I'm not directing that there be a time. I don't know if there were any benefits. But let's suppose there were benefits on three occasions, I'm not suggesting that they have to give dates, it may be that they can adequately respond by simply giving the starting and ending date to give you some time perspective on this matter.

MR. COFFEY: May we have till twelve noon tomorrow, your Honor?

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	)	
	)	
V.	)	CRIMINAL NO. N-76-91
	)	
EDWARD V. MASE and	)	
EDWARD R. GIANOTTI	)	

DEFENDANT MASE'S SUPPLEMENTAL MOTION TO DISMISS THE INDICTMENT

1. Defendant Mase is a resident of East Haven, Connecticut, who was indicted by a grand jury at New Haven on July 14, 1976.

2. On September 27, 1976, a jury was selected at the New Haven seat of court, and the case was continued for the receipt of evidence until October 5, 1976, pending hearing on defendant Mase's pretrial motions on September 30, 1976.

3. The jurors selected on September 27, 1976 were:

1. Mary J. Doyle of Waterbury;
2. Donald Remillard of Clinton;
3. Lillian Brown of New Haven;
4. Cynthia Rogers of West Haven;
5. Mildred M. Farrell of North Haven;
6. Darlene Drummer of Seymour;
7. James J. Kenney of Branford;
8. Patrick Yeitz of Norwich;
9. Michael Demarco of New Haven;
10. Thomas McDonald of Branford;
11. Mary Ladd of New Haven; and
12. Mary Ritz of Wallingford.

The alternates were:

1. Edward P. Collins of Middletown;
2. Nellie Barnick of North Haven; and
3. John W. Stender of Wallingford.

4. At a hearing involving, inter alia, defendant Mase's pretrial motion relating to an inordinate amount of publicity about this case in the press before this Court on September 30,

1976, defendant Mase waived his right to a public hearing and requested a closed hearing, which request was denied, despite the fact that the Court on at least one other occasion had granted such a request.

5. Without taking any precautions to minimize the generation of publicity despite the inordinate amount of publicity received about the case, the Government and the Court accepted the plea of guilty of co-defendant Gianotti on or about September 28, 1976.

6. By the failure of the Court and the Government to permit the waiver of the public hearing on September 27, 1976, as requested by defendant Mase, and by the failure of the Court and the Government to take adequate precautions concerning the acceptance of the plea of guilty of co-defendant Gianotti, additional massive publicity resulted as set forth, inter alia, in Exhibits 1, 2, 3 and 4 annexed to this motion.

7. As a result of the foregoing, defendant Mase, on October 5, 1976, moved for a mistrial, as on record; and, after the jury was sworn and after conducting an individual voir dire of six jurors, the Court granted a mistrial. Three of the jurors recalled references to defendant Mase in the articles as associated with organized crime; three of them stated that they learned from the articles that co-defendant Gianotti, defendant Mase's co-defendant, had pleaded guilty; and one stated that defendant Mase had pleaded guilty.

8. The publicity generated as a result of the lack of a closed hearing and the failure to make suitable arrangements for

the acceptance of a plea of guilty of co-defendant Gianotti was part of a continuum of publicity generated, in part, by the conscious effort of the Government, as more fully appears in the Motion of Defendant Edward V. Mase to Dismiss the Indictment dated September 2, 1976 and evidence received relating thereto on September 27, 1976, including, inter alia, the following:

1. New Haven Journal-Courier, "Indictment Due Today." July 14, 1976, p. 1 (Andrew L. Moulding):

(a) para. 1: "A federal grand jury is expected to return an indictment today against Edward V. Mase for alleged loan-sharking activities."

(b) para. 15: "Dorsey Tuesday evening said the grand jury is expected to return an indictment today."

2. New Haven Register, "Indictments Due in Crime Probe," July 14, 1976, p. 1 (no by-line):

(a) para. 1: "A federal grand jury is expected to return an indictment today against Edward V. Mase for alleged loan-sharking activities."

(b) para. 6: "According to sources close to the case, some of the subpoenaed witnesses Tuesday, DeMartin and most of his associates invoked the Fifth Amendment..."

3. New Haven Journal-Courier, "Area Pair Indicted in Loanshark Case," July 15, 1976, p. 1 (Andrew L. Moulding):

(a) para. 6: "Mase has long been described as one of the New Haven area's organized crime syndicate figures."

(b) para. 9: "Reportedly, Coffey's agents have information that Mase had other 'suckers' who owed gambling debts".

(c) para. 12: "Dwyer reportedly has the protection of the FBI pending his appearance as a witness against Mase and Gianotti."

4. New Haven Register, "Crime Probe Isn't Over," July 15, 1976, p. 52 (no by-line):

(a) para. 1: "Wednesday's two loansharking indictments in U.S. District Court here may be only the start of what federal officials say is a broad probe of racketeering in the New Haven area."

(b) para. 8: "He [Mase] has been described as a significant 'organized crime' figure in this area."

5. New Haven Journal-Courier, "DeMartin Listed," September 1, 1976, p. 1 (Andrew L. Moulding):

(a) para. 6: "Federal investigative sources claim Mase and Gianotti hold subordinate positions to DeMartin's in the New Haven-Bridgeport area syndicate."

6. New Haven Journal-Courier, "Man Denies Mase Case Involvement", September 6, 1976, p. 44 (Andrew L. Moulding):

(a) para. 4: "Federal sources indicate the strike force is hoping to make further inroads into alleged organized crime activities in the greater New Haven area."

7. New Haven Journal-Courier, "Gianotti Shifts Plea to Guilty," September 29, 1976, p. 1 (Andrew L. Moulding):

(a) para. 4: "Mase,...who purportedly is a member of the New Haven area organized crime syndicate...."

8. New Haven Register, "Man Pleads Guilty in Extortion Case", September 29, 1976, p. 76 (no by-line):

(a) para. 4: "The 50-year old Mase...reportedly has organized crime connections..."

9. As a result of the mistrial, the Court, over objection of defendant Mase, has transferred this case to the Hartford seat

of court for trial on November 8, 1976, before a jury to be selected pursuant to the District of Connecticut Plan for Random Jury Selection, adopted pursuant to the Jury Selection Act, 28 U.S.C. §1861 et seq., of which this Court is requested to take judicial notice.

10. 28 U.S.C. §1861 provides:

> "It is the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the community in the district or division wherein the court convenes. It is further the policy of the United States that all citizens shall have the opportunity to be considered for service on grand and petit juries in the district courts of the United States, and shall have an obligation to serve as jurors when summoned for that purpose."

11. The Plan violates defendant Mase's rights to a grand jury selected from a fair cross section of the community and is illegal and invalid in that it systematically excludes residents of New Haven County where defendant Mase resides and where the alleged offense occurred from jury service, since jurors will be selected only from the Hartford Division.

WHEREFORE, pursuant to the Fifth and Sixth Amendments to the Constitution of the United States, 28 U.S.C. §1867, and Rule 12 of the Federal Rules of Criminal Procedure, defendant Mase moves to dismiss the indictment.

Dated at Bridgeport, Connecticut, this 28th day of October, 1976.

Jacob D. Zeldes

Zeldes, Needle & Cooper, P.C.
Post Office Box 1740
Bridgeport, Connecticut 06601

Attorney for Defendant
Edward V. Mase

In Loan Shark Case

Plea Change Eyed

By ANDREW L. HOULDING
Staff Reporter

Edward Gianotti of East Haven, accused with Edward Mase of loan-shark activities in a federal indictment, is expected to change his previous "not guilty" plea in federal court this morning.

But Mase, a reputed member of the New Haven area organized crime syndicate, moved his case toward a trial Monday, when a jury was selected. The trial is scheduled to begin a week from today.

Meanwhile in federal court, two Providence, R.I., men entered guilty pleas to charges they conspired with a third Providence man to enrich themselves in a tax-fraud scheme at the Plainfield dog track. The men were arrested last summer by IRS agents on charges they were offering to cash winning track tickets for a percentage of the win, saving the true ticket holder the normal federal income tax bite on big gambling winnings.

In the loan-shark case, Mase and Gianotti were charged with threatening Paul Dwyer, a tax accountant in Branford, with physical injury if he failed to pay gambling debts he allegedly owed to Gianotti and to Edward Papagoda, operator of a Branford service station.

Federal prosecutorial statements allege that Mase was acting as collection agent for both Gianotti and Papagoda, and

(Continued on Page 16)

EXHIBIT 1
NEW HAVEN JOURNAL-COURIER, SEPTEMBER 28, 1976, P. 1

New Plea Possible

(Continued from Page 1)

that Mase and Gianotti separately threatened Dwyer.

Mase's attorney, Jacob Zeldes of Bridgeport, has filed motions to dismiss the charges against his client on grounds that pre-trial publicity had made it impossible to select an unbiased jury to try the case.

Zeldes cited Journal-Courier and Register articles about the case and further claimed that the government had stimulated the publicity — a claim which the federal prosecutor, Paul Coffey, denied.

Zeldes had subpoenaed this reporter, demanding to know the sources of several comments in articles on the Mase case, in an apparent effort to buttress his claim that the government had stimulated the articles.

But during questioning of the entire group of 47 prospective jurors prior to selection of the jury only three indicated they had read about the case.

Judge Jon O. Newman, who presided Monday, has not yet ruled on Zeldes' motion. Counsel for The Journal-Courier, meanwhile, prepared motions to quash the subpoena and to protect the confidentiality of news sources.

In the Plainfield dog track cases, a jury was chosen to try Louis DiMaio of Providence and Edward S. Smith of Miami, Fla., beginning Oct. 18.

DiMaio is also a co-defendant in cases in which two alleged co-conspirators pleaded guilty Monday.

DiMaio allegedly conspired with Anthony T. D'Errico in a scheme in which D'Errico approached a winning ticketholder and offered to cash it at a discount, saving the winner the necessity of filling out an IRS tax form and paying a portion to the federal government.

D'Errico, pleading guilty, said he wished to assert his innocence for purposes of the court record, and expressed some reservation about testifying against others. But as assistant U.S. Atty. Michael Hartmere outlined the government's case against him, D'Errico agreed it was "basically correct."

DiMaio also is a co-defendant with Arthur Almeida in a similar case. Almeida pleaded guilty to the conspiracy charge lodged against him. Both Almeida and D'Errico now await sentencing, with recommendations of lenience from the prosecution in exchange for their changes of plea.

In the DiMaio-Smith case, the government contends the defendants conspired to cash a winning dog track ticket for $1,261 for Dennis L. Kubesh in an effort to cheat the government for a portion of Kubesh's winnings.

The Plainfield cases arose from a lengthy investigation by IRS agents who spent many nights mingling with the crowds at the track and watching alleged "ten percenters" in action near the cashier windows.

Gianotti Shifts Plea To Guilty

By ANDREW L. HOULDING
Staff Reporter

Edward Gianotti Tuesday pleaded guilty to a federal charge of attempted extortion of a gambling debt from Paul Dwyer, a Branford tax accountant.

Gianotti had pleaded innocent at his arraignment in July.

As part of a prior agreement with Gianotti, federal prosecutor Paul E. Coffey stated that Gianotti is not a member of any "organized crime" syndicate, and the court dismissed a second charge against Gianotti which alleged that he conspired with Edward V. Mase in the extortion.

Mase, who was indicted with Gianotti for alleged loan-shark activities and who purportedly is a member of the New Haven area organized crime syndicate, is scheduled to come to trial next week. Gianotti is not scheduled to testify against him, however.

Gianotti, in an interview in the presence of his attorney immediately following his guilty plea, Tuesday described himself as a long-time gambler who began to take gambling action from the alleged loansharking victim, Dwyer. Gianotti said that his previous gambling experiences had led him to understand that he was better off taking Dwyer's bets than placing bets with others.

(Continued on page 7)

Gianotti Shifts Plea To Guilty

(Continued from Page 1)

He said that his theory was correct, and he quickly won several thousand dollars from Dwyer; unfortunately, Dwyer failed to pay, Gianotti had debts he owed to other persons, and he badly needed the money owed by Dwyer.

Gianotti said he has known Mase all his life, and simply asked Mase if he could help him collect the debt.

The government contends that Mase threatened Dwyer with physical injury if he didn't pay Gianotti and Edward Papagoda, a Branford service station operator.

Gianotti admitted that he tried to instill fear in Dwyer that he would be harmed if he didn't pay, and it was this admission that was accepted by the court with the guilty plea Tuesday.

But Gianotti claimed afterwards, in the interview, that he had known Dwyer for several years on a friendly and professional basis, and that despite the threats he would not really have allowed Dwyer to be hurt. Rather, he indicated, he would have forgotten the debt.

Gianotti also asserted his belief that Mase "wouldn't hurt anyone" either.

But the government's case against Mase apparently includes tape recordings of threats made by Mase to Dwyer.

Gianotti is scheduled for sentencing Nov. 1 after preparation of a report by probation officers. The maximum sentence for the offense is 20 years in prison and a $10,000 fine, but Gianotti — who apparently has no prior criminal record — is hoping to get off without serving any jail time.

EXHIBIT 2
NEW HAVEN JOURNAL-COURIER, SEPTEMBER 29, 1976, P. 1

Man Pleads Guilty In Extortion Case

An East Haven man pleaded guilty Tuesday to a federal charge of attempted extortion of a gambling debt from Paul Dwyer, a Branford tax accountant.

The plea was entered by Edward Gianotti, 29, who is scheduled to be sentenced Nov. 1.

As part of an agreement with Gianotti, federal prosecutor Paul E. Coffey stated that Gianotti is not a member of any "organized crime" syndicate, and the court dismissed a second charge against Gianotti which alleged that he conspired with Edward V. Mase in the extortion attempt.

The 50-year-old Mase, who was indicted with Gianotti in connection with the Dwyer case, reportedly has organized crime connections, and is scheduled to come to trial in federal court here next week.

The government claimed Gianotti and Mase threatened Dwyer with physical injury if he didn't pay gambling debts.

The alleged threats took place last June, the government claims.

In another matter in federal court, a Stamford man pleaded guilty Tuesday in connection with the attempted armed holdup last April of a Stamford post office.

Arvil Chapman, 24, of 41 Ludlow St., allegedly entered the post office at Main and Atlantic Streets in Stamford April 7 and with a gun partially concealed in his hand tried to get a postal clerk to turn over money to him.

However, the clerk ducked and fled, and Chapman was chased from the post office, the government indicated. He was identified and arrested after an investigation.

Judge Robert C. Zampano accepted the plea, noting that he had "very carefully" questioned attorneys for both sides in the case concerning the facts of the matter.

He explained that Chapman, who maintained firmly that he was innocent and could produce alibi witnesses, probably would have been convicted in a trial.

The judge said that "after lengthy conversations, the court is satisfied that the plea is voluntary and in the best interest of the defendant."

EXHIBIT 3
NEW HAVEN REGISTER, SEPTEMBER 29, 1976, P. 76

Judge Weighs Publicity Motion In Mase Trial

By DAMIAN FORMISANO
Staff Reporter

A federal judge reserved decision here Thursday afternoon on a motion to dismiss the indictment against Edward V. Mase. Evidence was presented by the defense alleging "prejudicial pre-trial publicity" generated by the government.

After hearing three witnesses — two newsmen and an FBI agent — Judge Jon O. Newman indicated the parties should be ready for trial Tuesday. The jury has already been selected.

Mase, 50, a New Haven resident, is charged with conspiracy and attempted extortion of a gambling debt from Branford tax accountant Paul Dwyer.

Mase's lawyer, Jacob Zeldes of Bridgeport, claimed his client cannot receive a fair trial because of news reports containing references to Mase's reputed "organized crime connections." He indicated that much of the "prejudicial" material was leaked to the press by the government, and this constitutes also improper governmental conduct.

The primary news reports have appeared in The New Haven Journal-Courier since the grand jury was convened to look into the alleged extortion attempt, which, the government claims, occurred last June at Dwyer's home.

The stories have contained references to Mase's prior criminal record and his alleged relationship with "organized crime".

One Courier story, which appeared a few hours before Mase was indicted last July, indicated that he would be indicted. Another referred to the invoking of the Fifth Amendment by a number of individuals who were called by the government to testify before the grand jury in connection with the case.

Zeldes' attention was focused on reporter Andrew Houlding, who wrote the Courier articles.

In preparation for Houlding's testimony, Zeldes called FBI Agent Stephen Slifka, who is coordinating the Dwyer case investigation.

Under questioning by Zeldes, Slifka denied having spoken to the press about the case, and said he didn't know Houlding.

Houlding, when questioned by Zeldes, said he spoke with various government officials in regard to the Mase investigation, and added that no such official had "on the record" with him characterized Mase as being connected with organized crime.

As far as "off the record" characterizations of Mase, Houlding said, he was reluctant to answer the question, citing a necessity to protect confidential sources.

Concerning the advance story that referred to the indictments that would be handed up, the reporter said he was told by U.S. Atty. Peter C. Dorsey, whom he phoned when he saw that a grand jury was meeting last July, that such indictments would probably be handed up.

The source of the reference in a story to the invocation of the Fifth Amendment by other men called by the government before the grand jury, Houlding cited as sources close to some of the men called.

Questioned by the prosecutor in charge of the case, Paul Coffey, a special attorney assigned to handle organized crime cases, the reporter claimed that no person connected with Coffey's office had said the figures in the Mase case were connected with organized crime.

Also indicted with Mase was Edward Gianotti, 29, of East Haven, who earlier this week pleaded guilty.

Representing Houlding and the newspaper at the hearing was attorney Carter LaPrade, who had filed motions to protect the reporter's sources.

The other newsman to testify was Noah Gurock of Channel 8, who submitted a news report the station carried on Sept. 27.

EXHIBIT 4
NEW HAVEN REGISTER, OCTOBER 1, 1976, P. 46

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

- - - - - - - - - - - - - - - - - x

UNITED STATES OF AMERICA :

vs. :

EDWARD MASE :

- - - - - - - - - - - - - - - - - x

Criminal Action

No. N-76-91

New Haven, Connecticut
Monday, October 5, 1976

B e f o r e :

HONORABLE JON O. NEWMAN, U.S.D.J.

PRETRIAL HEARING

A p p e a r a n c e s :

For the Government: PAUL E. COFFEY, ESQ.
450 Main Street
Hartford, Connecticut

For the Defendant: JACOB D. ZELDES, ESQ.
333 State Street
Bridgeport, Connecticut

government, if anyone, identified or labeled the defendant as an organized crime figure, and then whether anyone in the government was the source of information that witnesses had claimed their privilege against self-incrimination, that's when Mr. Houlding refused to answer.

It was in that context that he refused to identify sources.

Actually, in the second area he did partially identify at least to the extent of precluding the Government as the source.

So we are left only with the first issue, of whether anyone from the government identified the defendant or in Mr. Houlding's words, confirmed his -- how did you put it? -- suggestion that an organized crime label was appropriate, and Mr. Houlding explained to us that indeed had been in his newspaper files going back to 1972, so this effort to show waiver as to the source of some specific information as to which the witness was never asked, we really need not go into.

MR. ZELDES: May I offer this, if your Honor please? It seems to me that the Court's ruling is unduly cutting out the broad nature of our claim.

THE COURT: I understand what your position is.

MR. ZELDES: I would ask permission to ask

Mr. Houlding that question, then, if your Honor feels it wasn't precise. He is in the courtroom. His examination hasn't been concluded completely, and I would ask that question, that in Exhibit E, referring to Mr. DeMartin, where the article reads: "Sources indicate that DeMartin, who is not expected to testify voluntarily, might be given use immunity and compelled to testify or face contempt of court."

I would like to ask him if in fact that were the government sources --

THE COURT: No.

MR. ZELDES: If I may finish the claim. Two, whether or not he had this information prior to the time that the Grand Jury met in the case.

THE COURT: No. I am not going to recall Mr. Houlding to the stand. He was here, he was asked a series of questions that you wanted to ask him. He made it clear which ones he would answer and very few, I think only three in number, and two were largely repetitive, that he would not answer, and there is no reason now to resume questioning of him, just no basis has been shown to do that.

Is there any other reason why these matters can't be ruled on now?

MR. ZELDES: The only claim I would like to make is that witness would testify as to what I said, and that should be considered for the record as our claim with

respect to calling the witness.

THE COURT: All right.

MR. ZELDES: That was the only point I wanted to make on that, if your Honor please.

(Recess.)

MR. ZELDES: I wasn't certain if I made it clear that our claim was that the conversation between the witness Houlding and the offered witness took place in advance of the meeting of the Grand Jury, and in which Mr. Houlding advised the witness that the FBI gave him information about Mr. DeMartin, who is referred to in Exhibit E to the motion, and that Mr. DeMartin would be a witness at the Grand Jury.

THE COURT: With respect to the motion to dismiss the indictment, several grounds hae been presented and I will deal with them now orally on the record.

The first ground concerns the failure to accord the defendant a preliminary hearing prior to indictment, and more particularly the cancellation of a scheculed preliminary hearing which was followed within two days by indictment.

The complaint is that the defendant was thereby denied the opportunity to cross-examine the witnesses whom the government would have produced at the preliminary hearing, to establish probable cause necessary

to hold the defendant for trial.

In opposition to that phase of the motion, the government has submitted an in camera affidavit which may remain under seal. I have read it primarily to determine whether there is anything in it that ought to be turned over to the defendant in order to adequately protect his rights. I am satisfied it contains no Brady material or it is otherwise producable to the defendant.

As far as its use in connection with this motion, I don't make any use of it at all, and have not.

It seems to me very clear that the doctrine of the Sciortino decision in this case makes clear that the defendant cannot complain if he is proceeded against by indictment and that the government has elected not to have a preliminary hearing.

Upon the government's abandonment of its preliminary hearing, the complaint was dismissed and there then was no custody or other restrain of the defendant. I suppose it's conceivable that he might have some claim based on the restraint to the extent there was any, which occurred from the time of the arrest to the time the process was dismissed, but the issue before me is whether the indictment is in any way rendered defective or admissible by the absence of the preliminary hearing, and I am satisfied the answer to that question is plainly no.

The second claim has to do with the alleged vagueness of the statute under which the defendant has been indicted, the Extortion and Credit Transaction Act of 1968.

I am satisfied that claim is without merit. The Supreme Court decision in Perez largely deals with the claim, and to the extent that the defendant in this case develops alternate arguments, I am satisfied they are without merit.

The principal claim seems to be that the words "express or implied threat" put a defendant to the peril of being held criminally responsible for words that in fact are not extortion, if at all, and that seems to me simply to be a misapprehension of what the word "implies" means.

It doesn't, as the argument is made, suggest that it depends on what was in the mind of the victim. If something is implied, it's because the maker of the statement implied it. Otherwise, it would be called an "inferred threat," if Congress was using its language properly, and I have to assume they were.

So whether a threat is expressed or implied focuses on the intent of the maker of the threat, and the statute is not vague simply because it permits words to be actionable which carry an implied threat, even though the words themselves do not expressly carry that threat.

There are obvious examples. A person could say to a victim shortly after some injury had occurred to somebody else, "Remember what happened to Mr. X."

Those words in the abstract would not be an expressed threat, but in context would certainly carry an implied threat, and there is no Constitutional objection to punishing conduct of that sort, so that claim is rejected.

The third claim has to do with an alleged deficiency in the jury selection plan of this district which extends to women with legal custody of a child under the age of twelve, the opportunity to claim excuse from jury service, whereas the questionnaire form extends no comparable opportunity for excuse to a man with legal custody of a child under the age of twelve.

This claim is quite different from those situations where there has been an exclusion of an identifiable class. No group is being excluded from jury service by the questionnaire. I think the point is somewhat well taken and the form would be more in keeping with modern approaches to recognizing lack of artificial distinctions between the duties of men and women if it accorded the excuse to any person with custody of a child under twelve who devotes a substantial amount of daytime hours to the rearing of that child, but the failure to use that language does not in my judgment arise to constitutional dimensions.

There is no indication whatsoever that if a man has legal custody of a child under twelve, and would want the same excuse available to a woman, that he could not obtain it, so at most what the defendant has shown is that it's easier for a woman to exercise or to obtain an excuse on that ground than a man, because that ground of excuse is printed on the form for a woman but not for a man.

To the extent that's a distinction I am satisfied it does not impair the selection of a jury selection process in this district by excluding or even tending to exclude an impermissible class. So that claim is rejected.

The fourth claim has to do with prejudicial pretrial publicity and more particularly the government's role in the generation of pretrial publicity.

In connection with that claim there is pending the evidentiary ruling concerning questions put to Mr. Houlding in the course of hearing on that motion.

The witness who wrote some of the articles on which the defendant bases his attack declined to answer questions in two categories. One has to do with his source of information as to whether witnesses before the Grand Jury had invoked their privilege against self-incrimination. The witness did answer that question to the extent of saying that his source for that information did not come from the government and indeed the article in question uses a phrase

that suggests that the source was either the witness's themselves or those close to them, such as counsel or others.

So there is really no issue pending as to requiring a reporter to identify who among the non-Governmental sources may have given that information.

There remains the claim that the witness did decline to identify who among the government confirmed for him, as he put it, that the defendant had some involvement with organized crime activity and in the circumstances of this case I don't think it's appropriate to compel an answer to that question.

Certainly, compelling an answer to that question is not needed to make a fair determination of whether any substantial right of this defendant has been prejudiced.

The reporter indicated that his own newspaper files going back to 1972 referred to the defendant as having some organized crime connections. While I can agree with the defendant that that label is bandied about by the press all too freely, when the label is in newspaper articles that go back several years, it's available for the reporter's use if he chooses to use it, and its repetition even if the current source was a government official simply does not constitute that type of improper conduct which justifies the dismissal of an indictment, albeit, that such a gratuitous label ought to be avoided.

So as far as requiring the reporter to answer the questions that were left unanswered, I am satisfied that the circumstances of this case do not warrant compelling answers to those questions. Even assuming, and I think -- I will say I think it's a fair inference from everything the reporter said, that someone from the government did confirm to him that the defendant had organized crime connections, and even if that is the case I don't believe that circumstance, or any of the circumstances disclosed in the articles rise to the level of that degree of improper governmental conduct that justifies dismissal of an indictment.

Apparently, government sources did prior to the return of the indictment indicate that it was expected. That ought not to have been done. The Grand Jury should make its own determination of when, if at all, it's going to return an indictment, and no useful purpose is served by the government publicly predicting when action might be taken or what the action might be, but, again, while the remark ought not to have been made, it is not that degree of impermissible improper governmental misconduct that warrants the sanction of dismissal of an indictment.

As far as the articles themselves, they have to be viewed in the context of the jury selection process in this case. The array of forty-four veniremen was questioned and only three people indicated that they

ever heard of the defendant or this case, so obviously, the context in which these issues arise is not one in which there has been such massive publicity that substantial members of an array have been saturated or even made aware of adverse publicity, and also I think it's worth pointing out that the traditionally harmful matters, that is, specific evidence attempting to establish the guilt of the defendant, has not been disclosed nor appeared in the papers other than the extent to which that information was reported in public documents such as the indictment in the complaint and the supporting affidavit offered In aid of the complaint.

There is an additional ground, and if I have overlooked one, I am sure Mr. Zeldes will remedy that omission. There is one additional ground having to do with the fact that the conspiracy count of the indictment provides maximum penalty of up to twenty years, which is alleged to create constitutional objections when compared to the availability of Section 371 of the Criminal Code providing a five-year maximum for conspiracies to violate all federal statutes, and several Constitutional objections are directed to that alleged disparity.

I have serious question at the outset in considering that argument as to whether in fact the general conspiracy statute is available to punish a conspiracy to use extortion as the means to collect an extension of credit.

It seems to me at least a substantial argument that when Congress has added to the Criminal Code a specific statute prodding a twenty year penalty for a specific conspiracy, that that enacted statute is in effect a modification of the general statute and may well eliminte the choice that the defendant thinks the government has to choose between a five year maximum and twenty year maximum.

The situation would, of course, be more acute if we were involved with mandatory minimums rather than maximums, but as I indicated, my first doubt is that the five year maximum is available here when Congress has specifically provided that a twenty year maximum is the more specific conspiracy statute for this particular type of conduct.

Even if both maximums were available I would have serious doubt as to whether any Constitutional violation thereby occurred. The matter of sentencing still remains with the Court while the maximum is higher. If the Court thinks that the five year limit of the general conspiracy statute is available, then it's free, even under the twenty year statute, to impose no more than five years.

I don't think the Court is limited, but the point is that the ultimate decision on penalty clearly remains with the Court. And so I don't think any separation of powers argument or encroachment on the prerogative of the judiciary remotely appears in this case, nor do I think there

is any serious vagueness argument because of the defendant reading the statute is put on notice that in fact there is a twenty year maximum, and there is nothing vague about that.

He may think he has a possibility of securing a five-year maximum but I don't think vagueness can be engendered by a defendant's hope that an equal protection argument will prevail. So I find the argument as to the twenty year penalty of the conspiracy statute unavailing.

I think the final argument had to do with an effort to apply Wharton's Rule to this indictment inasmuch as the bill of particulars on the substantive count specifies that in fact two people participated in the commission of the substantive offense. I think the Supreme Court's decision in the 1955 case is largely dispositive of that claim.

There the statute itself seemed to require joint action to commit the substantive offense, and the Court was unimpressed with the Wharton's Rule argument, and I'm satisfied they would be equally unimpressed with the application of the facts to this case.

For all of those reasons the motion to dismiss the Indictment is denied.

There is one other matter pending. The government has submitted some documents for in camera inspection as to whether they contain any Brady material, and I have read through them. I don't think it reveals any

additional delay, but I do want to take up one matter with you.

Before doing that, I think when this jury was selected, they were not formally sworn in as members of the petit jury in this case, so I will ask the clerk to administer the petit oath at this point.

(Jury sworn)

THE COURT: I am going to ask you a question, ladies and gentlemen, and Iwant to say at the outset if the answer to the question is yes, for the moment, please limit your answer to yes. Don't go on to tell me a lot more right at this point.

If the answer to the question is yes, just by raising your hand, indicate that. The question I want to put to each of you is whether or not in the time since you were selected to this jury, some days ago, any of you had any occasion to read any newspaper articles concerning the case of United States against Edward Mase or to read any articles that mentioned Mr. Mase or had anything to do with this case at all, or -- I don't know if there were any, but if you may have -- if there were any, did you hear any television accounts or radio accounts or anything of that sort? Any members of the jury for whom that is so?

All right. I see three hands are raised -- four hands are raised. Any others? Five hands are raised,

six hands are raised. Don't be bashful about this. If it happened, I want to know about it. It happened with respect to six people; is that correct? Any others?

Would those six put their hands up, please? If I have them in the right order, I am not sure: Mr. Collins, Mr. Remillard, Mrs. Farrell, in the front row. Anyone else in the front row?

Turning to the back row, then, is that Mr. Kenney?

MR. KENNEY: Yes.

THE COURT: Mr. DeMarco and Mr. McDonald.

What I am going to do, ladies and gentlemen, is ask you to return to the jury room for just a few moments, and then I want to, with respect to the six who did read anything, ask them just one or two additional questions individually and in returning to the jury room I will ask you quite specifically not to discuss this case amongst yourselves and particularly those who may have read anything about the case, not to discuss with those in the jury room what you may have read. So just upon your return to the jury room don't discuss any aspect of the case, nor what those of you who have seen an article may have seen in those articles.

I will ask the entire jury to retire, and I will ask Mr. Collins to remain just a moment.

EXAMINATION OF MR. COLLINS:

BY THE COURT:

Q Mr. Collins, will you tell us what you read or, first, in what paper do you recall?

A I think it was the Hartford Courant, your Honor, and I read -- I started, as I read the whole paper rather thoroughly, I read down until I came to a man's name, Mr. Mase, and I said that rang a bell, and I said I am not supposed to read this, and I stopped.

Q Until you got to that part of the article, do you recall any information or anything about this case?

A It seems to me the heading said something about co-defendant -- it's vague, because I didn't pay much attention. Co-defendant -- something about a co-defendant. He either dropped out of the case or pleaded -- I am not sure, your Honor. It was a heading that struck my attention.

Q Was that the only article you saw or was there anything else?

A That's the only article I saw.

Q Mr. Collins, was there any discussion of that, or any other article in the jury room this morning?

A None.

THE COURT: You are excused.

MR. ZELDES: May the defendant be excused to go to the men's room?

THE COURT: Yes.

MR. COFFEY: I have no objection if we proceed without the defendant. If you wish to wait, I have no objection to that, either.

THE COURT: Mr. Remillard.

(Examination of Mr. Remillard.)

BY THE COURT:

Q Have you read any article in the newspaper or heard if there were any, any television or radio reports which in any way referred to this case of United States against Mase, or referred to Mr. Mase or referring to anything connected with this case?

A Yes, I have, your Honor.

Q Would you tell me what article or newscast that was?

A It was, I believe, Saturday morning's New Haven Register. I started to read the article without realizing what it was, and as soon as I realized that it pertained to Mr. Mase I stopped reading it.

Q Can you tell me what information, if any, you recall from that article?

A Well, I believe it had something to do with Mr. Mase being associated with organized crime.

Q Is there anything else you recall?

A No. I stopped at that point, your Honor.

Q Was there any discussion in the jury room by anybody of any newspaper articles, or anything that anyone had read this morning?

A The lady -- I don't recall what her name is -- she and I were the first two in this morning, and she mentioned that she had seen the article, and that she had felt the same way that I had. I stopped reading the thing when I realized what it was about, and she told me she had done the same thing.

Q Do you know which juror that was?

A I don't know what her name is. She is wearing a checked coat.

Q When you quoted her as saying she felt the same as you, --

A About the -- where I stopped reading, because I felt that it might give me information of someone else's opinion rather than fact.

THE COURT: Thank you.

(Mr. Remillard was excused.)

(Examination of Mrs. Farrell)

BY THE COURT:

Q You indicated you had seen some article or heard some account?

A Yes, that's true.

Q What was that?

A It was in the Register, I believe.

Q Do you know which day?

A Probably Friday.

Q What do you recall from that article?

A I just recall the headline, extortion case. I don't recall too much about it. But I know I saw the article.

Q Do you recall any information at all from it?

A I recall that another man involved in this case pleaded guilty. I remember reading that.

Q Anything else?

A I recall the two names, Paul Dwyer and Mase. That's about it. I really didn't read any more.

Q Mrs. Farrell, was there any discussion in the jury room about anything either you had read or anything else anyone else had read about this case?

A No, there wasn't any discussion.

THE COURT: Thank you.

(Mrs. Farrell was excused.)

(Examination of Mr. Kenney)

BY THE COURT:

Q Mr. Kenney, you indicated there was some article or news account that you saw or heard. Could you tell us what

that was?

A What I read was what was in the New Haven Evening Register. I believe it was September 27th or 28th, in the center section, the first section, the last page of that paper.

Q Do you recall what you read?

A It was in reference to this case, the Mase case. That's M-a-s-e, and Paul Dwyer. It was only about three or four lines in the item. That's all I read pertaining to the case.

Q What you recall of the names Mase and the name Dwyer?

A Yes.

Q Do you recall anything else about the case at all?

A No. There was something about -- I believe there were two other names. One other name, Gianotti.

Q What do you recall about that name, if anything?

A That they were supposed to be involved in some, say, syndicate.

Q In what?

A In some syndicate, or something of that effect. That's all -- I believe that's about all that was listed in that particular item.

Q Was there any other article or news account that

you saw or heard?

A No, sir.

Q Was there any discussion in the jury room today about anything that anybody had read or heard about this case?

A No, there wasn't, not that I heard.

THE COURT: Thank you, Mr. Kenney.

(Mr. Kenney was excused.)

(Examination of Mr. DeMarco)

BY THE COURT:

Q You indicated there was some article or news account that you had read or heard about?

A I just read the headlines.

Q Can you tell us what paper that was in?

A New Haven Register.

Q Do you remember what day?

A Last week, towards the end of the week.

Q Do you remember what the article said?

A It said extortion case and then I stopped reading, because I remembered that was the case I was on.

Q Is there any fact or detail or matter from that article that you recall at all?

A Not at all, sir.

Q Just the headline?

A Just the headline, and I stopped reading it.

Q Mr. DeMarco, was there any discussion in the jury room this morning about anything anyone might have read or heard about this case?

A No. They were only talking about the hockey game and the football game last night.

THE COURT: Thank you, Mr. DeMarco.

(Mr. DeMarco was excused.)

(Examination of Mr. McDonald:)

BY THE COURT:

Q You indicated you had read or heard some news account of this case?

A That's right.

Q Can you tell us what that was? Where was it?

A The New Haven Register.

Q Do you remember when?

A Friday, I believe.

Q Go ahead.

A It said that Mr. Mase had pleaded guilty to trying to collect money from Paul Dwyer and he was a member of organized crime.

Q Is there anything else from that article that you recall?

A Not that I recall, no.

Q Is that the only article or news account you saw or heard?

A Yes.

Q Was there any discussion in the jury room today about anything anyone had seen or heard about the case?

A No.

THE COURT: All right. Thank you very much.

(Mr. McDonald was excused.)

MR. ZELDES: I didn't hear the first part of what that juror said.

THE COURT: Read that back.

(Mr. McDonald's comments read.)

THE COURT: Mr. Zeldes, let me ask you what relief, if any, do you think you're entitled to?

MR. ZELDES: I renew the request to dismiss the indictment, if your Honor please. I renew the request to have a closed hearing on the proceedings. If the indictment is dismissed, I need no further relief.

If your Honor doesn't look with favor on that motion, I request a mistrial on the basis of the publicity that's been generated in the matter that the record shows it has been generated. I don't think it's necessary to point out to your Honor that -- the extremely prejudicial nature of the material.

THE COURT: I want to understand exactly the claim. I understand your first claim is that the indictment be dismissed. Your alternative claim, if that's not granted, is that there be a mistrial, but I am not entirely clear on the nature of the relief you are seeking, because it seems to me unlikely that you simply want a mistrial and to be followed by the prompt impaneling of another jury. That's why I am wondering what the full dimension of the relief sought is.

MR. ZELDES: Request is that the indictment be dismissed. If that's not granted, I want a mistrial, but I want it clearly understood that in our view the mistrial is caused in part at least by the government having generated publicity initially and the material having been repeated.

I don't think the record shows that in the newest article that I handed up that the government had any role in generating that except --

THE COURT: What I am trying to understand is relief sought, not your view of why you are entitled to it. Just the relief sought. You indicated the alternative or perhaps, more appropriately, the secondary position is for a mistrial, and I am trying to understand the full dimensions of that claim.

MR. ZELDES: I'm sorry I'm not being exactly precise but what I was trying to -- the reasons for

claiming a mistrial are such I claim so that I will be able to claim that the government cannot retry the defendant.

THE COURT: That's another way of saying that the indictment should be dismissed.

MR. ZELDES: Yes, your Honor. In other words, I am not saying that --

THE COURT: Let's take it in stages. You are making a motion to dismiss the indictment. That motion is denied.

Now what?

MR. ZELDES: I am moving that this hearing be closed. As long as we are in court under a right of the defendant to have a public trial, the defendant waives it, and that it should be closed.

THE COURT: That motion is denied.

MR. ZELDES: I therefore move for a -- I thereafter move for a mistrial, claiming that it's caused at no fault of the defendant, and that it is caused with partial fault of the United States to the extent the record shows that so as to preclude additional retrial.

THE COURT: Well, I am still not clear on what relief you want in the event there is a mistrial. I can appreciate then you want to go back to your initial motion to have no trial, which is dismissing the indictment, but I have already denied that, and that's why I want to know, when you

I appreciate that counsel continues to be concerned about the reference to organized crime or syndicate or words to that effect, but again, since the organized crime label was in the files of the newspaper going back to 1972, I simply cannot hold the government responsible for that.

I think the government counsel may well be right that it might be possible to ascertain from this jury that there remain twelve jurors who could conscientiously assure us that they could reach fair and impartial verdict without regard to whatever they may have read, but since it will not cause very much inconvenience to alter the site of the trial, I think it's probably the more prudent course to grant the defendant's motion for a mistrial, but I want to make it very clear on the record that I grant that motion only because of the fact that impaneled jurors report that they have, since being impaneled, become aware of the fact that a co-defendant pled guilty, and to the extent that one of the jurors misapprehended that information and took it to mean that the defendant himself pled guilty which, of course, is not so.

So to the extent the mistrial motion seeks relief on those grounds, to that extent it's granted, and only to that extent is it granted, and the case will be reassigned for trial.

A 1 3 1

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

CHAMBERS OF
JON O. NEWMAN
U. S. DISTRICT JUDGE
HARTFORD, CONNECTICUT

October 5, 1976

Jacob D. Zeldes, Esq.
333 State Street
Bridgeport, Connecticut

Paul E. Coffey, Esq.
Special Attorney
450 Main Street
Hartford, Connecticut

Re: United States v. Edward Mase-Criminal No. N-76-91

Gentlemen:

This is to advise that the trial in the captioned case will begin at Hartford on Monday, November 8, 1976, at 10:00 a.m.

Sincerely,

Jon O. Newman
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	)	
	)	
V.	)	CRIMINAL NO. N-76-91
	)	
EDWARD V. MASE and	)	
EDWARD GIANOTTI	)	

DEFENDANT MASE'S REQUEST TO CHARGE
(NO. 17)

In considering both charges against Mr. Mase, it is appropriate for you to keep in mind that the offenses with which Mr. Mase is charged are federal offenses and, unlike a state prosecution for threatening a person, the Government must prove that element by which the federal court has jurisdiction of each offense. Ordinarily, it must be shown that there is a specific federal nexus in a criminal case such as interstate commerce, use of the mails or the existence of a certificate issued by the federal government for banks. Under the statute involved in this case, the federal nexus need not be of that type, but there must be an extension of credit as that is defined in the statute because threatening alone or conspiring to threaten alone does not violate federal law. Threatening to collect every debt is not a federal crime, which is all you are concerned with. The debt must constitute an extension of credit, as Congress defined that term and as alleged in the indictment.

You must keep in mind that Mr. Mase is charged only with conspiracy and using extortionate means to collect an extension of credit. If you have a reasonable doubt of defendant's guilt of the specific charges, you must acquit even if you are dead certain that defendant did some other crime.

United States v. Stassi,
___ F.2d ___, slip op. 247, 251
(2 Cir. 1976)

Dated at Bridgeport, Connecticut, this 8th day of November, 1976.

Jacob D. Zeldes

Zeldes, Needle & Cooper, P.C.
333 State Street
Bridgeport, Connecticut

Attorney for Defendant
Edward V. Mase

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. N-76-91
	)	
EDWARD V. MASE and	)	
EDWARD GIANOTTI	)	

DEFENDANT MASE'S REQUEST TO CHARGE
(NO. 15)

(Count 2)

With respect to Count 2, Mr. Mase is charged with wilfully and knowingly using extortionate means to attempt to collect from Paul Dwyer an extension of credit. The Government claims Mr. Mase on June 17, 18, 21 and 22, 1976 expressly and implicitly threatened Mr. Dwyer with beatings and even death.

There are three essential elements in the crime charged in this Court, each of which the Government must prove beyond a reasonable doubt. They are:

(1) That there was an extension of credit by one person to Mr. Dwyer;

(2) That Mr. Mase intended to take actions which would reasonably induce fear in light of the surrounding circumstances in someone in Mr. Dwyer's position, U.S. v. Natale, 526 F.2d 1160, 1168 (2 Cir. 1976); and

3. That Mr. Mase acted knowingly and wilfully.

Nov 10, 1976
Correction to charge,
see page 5 and 6-7
JDZ

Please keep in mind what I instructed you with respect to an extension of credit alleged in the First Count.

With respect to the Second Count, the Government alleges that the extensions of credit consisted of two gambling debts: one incurred between June 4 and 6, 1976, by Paul Dwyer to Edward R. Gianotti in the approximate amount of $4,000.00, and a second incurred between August and September in 1972 by Mr. Dwyer to Edward R. Papagoda in the approximate amount of $985.00. If the Government does not prove beyond a reasonable doubt both that those gambling debts existed and were in fact extensions of credit, you must acquit Mr. Mase. Under allegations made by the Government, there must <u>have in fact</u> been an extension of credit established beyond a reasonable doubt.

18 U.S.C. §894(a)(1)

As I said, the Government alleges the extensions of credit were gambling debts incurred June 4-6, 1976 and in August and September, 1972. It must prove beyond a reasonable doubt not only that such gambling debts existed, but that they, the gambling debts, or one of them, constituted an extension of credit within the meaning of the law involved.

The law involved states that for the purposes of the law:

> "To extend credit means to make or renew any loan, or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or will be deferred." §891(1)

The normal extension of credit is the making or renewing of a loan, such as when one person or institution lends money

to another. The Government offered no evidence of any loans or renewals of loans and I instruct you as a matter of law that neither of the alleged gambling debts of June 4-6, 1976 from Mr. Dwyer to Mr. Gianotti or of August-September, 1972 from Mr. Dwyer to Mr. Papagoda upon which the Government relies, constitute a loan or renewal of loan.

The law involved also states that an extension of credit is an agreement whereby the repayment or satisfaction of any debt or claim may be or will be deferred.

18 U.S.C. §891(1)

Mr. Dwyer testified about placing bets on baseball games; the bets on these games are the basis for the Government's allegation that Mr. Dwyer owed Mr. Gianotti the approximate amount of $4,000.00 on June 4-6, 1976. Obviously there was no debt or claim due to Mr. Gianotti until after the baseball games were played. Mr. Dwyer has testified that, just prior to the baseball games of June 4-6, he wagered on other baseball games with Mr. Gianotti and won. Mr. Dwyer further said that when Mr. Gianotti did not give him his winnings he--Mr. Dwyer--placed the bets of June 4-6 with Mr. Gianotti and lost. On the following Monday, June 7, 1976, according to Mr. Dwyer, Mr. Gianotti called Mr. Dwyer but never discussed a dollar amount due. He. Mr. Gianotti, wanted to go over the tab and get the proper amount due. Mr. Dwyer added that Mr. Mase made the first contact on the following Monday, June 14, 1976. Before you can find there was an extension of credit you must find beyond a reasonable

doubt that Mr. Gianotti and Mr. Dwyer agreed after the June 4-6 betting that payment of the bets which Mr. Dwyer lost could be delayed or deferred by Mr. Dwyer. If you find that the Government has not proven beyond a reasonable doubt that Mr. Gianotti and Mr. Dwyer both agreed that payment by Mr. Dwyer for lost bets on the baseball games could be deferred, you must acquit Mr. Mase. If you find that the Government has not proven one way or another what the agreement between Mr. Gianotti and Mr. Dwyer was, you must acquit Mr. Mase because the Government has the burden of proof on this issue and all other issues. I instruct you in this regard that simply because Mr. Dwyer didn't pay the bets when due does not constitute proof beyond a reasonable doubt that there was an agreement between Mr. Gianotti and Mr. Dwyer that Mr. Dwyer could defer payment of the lost bets. If Mr. Dwyer on his own simply did not pay the bets to Mr. Gianotti, but his non-payment was not with the agreement of Mr. Gianotti, you must acquit.

Mr. Dwyer also testified about placing bets on other baseball games and on football games; the bets on these events are the basis for the Government's allegation that Mr. Dwyer owed Mr. Papagoda the approximately amount of $985.00 in August and September 1972. Obviously there was no debt or claim due to Mr. Papagoda until after the games were played. Moreover, Mr. Papagoda and Mr. Dwyer had other accounts which weren't from gambling. These are of no concern to you because the indictment alleges only that the gambling debt was the extension of credit. The Government must prove and prove beyond a reasonable doubt that the gambling debt alleged constituted the extension of

credit. Before you can find there was an extension of credit you must find beyond a reasonable doubt that Mr. Papagoda and Mr. Dwyer agreed that payment of the bets which Mr. Dwyer lost could be delayed or deferred by Mr. Dwyer. If you find that, as Mr. Dwyer said, Mr. Papagoda told Mr. Dwyer to forget the gambling debt and pay the other things owed, you must acquit as there is no extension of credit as alleged. If you find that the Government has not proven beyond a reasonable doubt that Mr. Papagoda and Mr. Dwyer both agreed that payment by Mr. Dwyer for lost bets on the games could be deferred, you must acquit Mr. Mase. If you find that the Government has not proven one way or another what the agreement between Mr. Papagoda and Mr. Dwyer was, you must acquit Mr. Mase because the Government has the burden of proof on each issue. [I instruct you in this regard that simply because Mr. Dwyer didn't pay the bets when due does not constitute proof beyond a reasonable doubt that there was an agreement between Mr. Papagoda and Mr. Dwyer that Mr. Dwyer could defer payment of the lost bets If Mr. Dwyer on his own simply did not pay the bets to Mr. Papagoda, but his non-payment was not with the agreement of Mr. Papagoda, you must acquit.

omit

Therefore, unless the Government has established beyond a reasonable doubt that Mr. Gianotti or Mr. Papagoda entered into an agreement with Mr. Dwyer to extend repayment of the gambling debt after the debt was due, you must acquit Mr. Mase on the Second Count.]

As to the claimed threats, in determining whether Mr. Mase intended to frighten Mr. Dwyer, you may consider all the circumstances as are applicable, such as the fact that Mr. Dwyer had been selling information to the Federal Bureau of Investigation, that several FBI agents were present on June 22, 1976, and that the recording was made at the FBI's request and that Mr. Dwyer placed bets with gamblers and got reimbursement from the FBI.

As to the third element of knowledge and wilfullness, in order to convict Mr. Mase, you must find beyond a reasonable doubt that he acted knowingly and wilfully. Now, an act is done knowingly if it is done voluntarily and purposefully and not because of mistake, accident, mere negligence, or other innocent reason. An act is wilfull if it is done knowingly, deliberately and with an evil motive or purpose. It is an act committed with the specific intent to do something the law forbids; it is an act done with an evil motive or purpose. I instruct you in this regard that it is not illegal to collect a gambling debt of the type alleged here or to persuade a person to pay such a gambling debt. One cannot sue in court to collect such a gambling debt and must rely on persuasion and cooperation of the bettor if the gambling debt is to be collected at all. If you find that the Government hasn't proved an evil motive beyond a reasonable doubt, but has only proved that Mr. Mase was attempting to collect a gambling debt or persuade Mr. wyer to pay the gambling debt, you must acquit Mr. Mase.

Therefore, in summary, if you find that the Government has not proved beyond a reasonable doubt (1) that Mr. Gianotti and Mr. Papagodh agreed with Mr. Dwyer to defer payment of gambling debts when

and (2) with respect to the Pagoda account that the $985 gambling debt was still in existence at the time Mr Mase approached Mr. Dwyer

due, you must acquit because under these circumstances, neither gambling debt constituted an extension of credit within the meaning of the law involved in this case.

Even if you find that there was an extension of credit, before you can convict you must find beyond a reasonable doubt that what Mr. Mase did constituted threats, express or implied, which means his action must be found to be intended under the circumstances of Mr. Dwyer having received money from the FBI and being in the presence of FBI agents to place Mr. Dwyer in fear.

And even then, when these two elements have been found, you must find that Mr. Mase had an evil intent or motive in taking the action he did and was simply not trying to persuade Mr. Dwyer to pay a gambling debt which couldn't be collected in a court of law.

Dated at Bridgeport, Connecticut, this 8th day of November, 1976.

Jacob D. Zeldes

Zeldes, Needle & Cooper, P.C.
333 State Street
Bridgeport, Connecticut

Attorney for Defendant Edward V. Mase

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF CONNECTICUT

THE UNITED STATES OF AMERICA	
-versus-	Criminal Action
EDWARD V. MASE	No. N-76-91

November 8, 1976

BEFORE: HON. JON O. NEWMAN,
United States District Judge
Hartford, Connecticut

APPEARANCES:

For The Government:

PAUL E. COFFEY, ESQ.,
Assistant United States Attorney
450 Main Street
Hartford, Connecticut

For the Defendant:

JACOB D. ZELDES, ESQ.,
333 State Street
Bridgeport, Connecticut

Friendly's decision in the Second Circuit. If there are many cases that make it clear, I didn't come upon them and I think the way Judge Friendly handled the situation in Fernandez he indicates clearly there is some question.

It's true he reversed on Fernandez on other reasons

THE COURT: On this point it couldn't be clearer. If you want to go back to New Haven tomorrow morning for a jury trial, you can have one. This may well be a case where what I've done in an effort to accommodate you is simply to give you more claims to make.

If you want a trial in New Haven, we'll have one tomorrow morning. I assumed you wanted to see what could be done to increase the possibility that the array had never heard of your client and so we're in Hartford this morning with an array ready.

If you want to maximize that opportunity, we'll pick the jury this morning. If you're not interested in doing that, we'll go back to New Haven.

MR. ZELDES: We originally requested New Haven.

THE COURT: On a continuance?

MR. ZELDES: Yes.

THE COURT: Well, there's no reason for an extended continuance of this case. I thought it could be done with a minimum of inconvenience and maximum fairness to the defendant to let him have his jury in Hartford where the chances

case was transferred to a division which will systematically exclude members of the county where the crime occurred and where the defendant resides.

If your Honor suggests, "Well, we can cure that by going back to New Haven and the option is up to the defense," it's something I must discuss.

THE COURT: All right.

MR. ZELDES: If your Honor please, we were ready to proceed today but in view of this option, I would elect that your Honor now offers to proceed in New Haven, I would also ask that the hearing be closed tomorrow, too, and--

THE COURT: You mean the trial?

MR. ZELDES: I waive on behalf of the Defendant; Mase, I will waive a public trial and request that a closed hearing in New Haven--

MR. COFFEY: Needless to say, the Government objects to that, your Honor.

THE COURT: Let me understand your position. Are you saying you want to go to New Haven only if it's a closed trial?

MR. ZELDES: I'm asking for a closed trial.

THE COURT: I want to understand on what basis you want a trial in New Haven. Is it only if you have a closed trial?

the New Haven division. There is no claim of class distinctions or any other distinctions that would in any way hurt the defendant and I am mindful even if he is not, that there still remains the far greater risk of articles about the co-defendant's plea showing up in the New Haven papers than the Hartford papers. And if I were to accede to defendant's request to go to New Haven and have a closed trial, there would be banner headlines about the case. I can think of nothing calculated more to bring to the attention of the entire New Haven community the pendency of this trial than to close it to the press. And it would be inevitable that those articles would recount the procedures and would mention the plea of the codefendant.

So, since there is no improper reason for holding it in Hartford, and indeed in my judgment it is in the defendant's interest to have this trial in Hartford, where the risk of the co-defendant's plea coming to the jury will be minimized if not eliminated, I'm going to withdraw the option that I discussed with counsel a few moments ago, leave the trial at Hartford, deny the motion to dismiss the indictment, and deny the motion to transfer the case back to New Haven.

So now the only other motion that I know of concerns the issue of use of peremptories. Do you need to be heard on that or is your brief sufficient?

MR. ZELDES: I don't wish to be heard additionally

THE COURT: All right. Let me indicate one other matter that entered into my thinking on that. I checked with the clerk's office in New Haven to find out what the situation would be with respect to selection of a jury in New Haven. There is an array coming in tomorrow but I'm advised that it includes a significant overlap with the array from which the Mase jury was originally picked in New Haven some weeks ago. So, it seems to me that it would be very ill advised to use that array because then there would be questiones raised in their minds as to why there was a second jury selection process, and it is not feasible rapidly to summon another array in this district. Unlike the southern district, we do not have jurors in the building every day and in fact the state of the jury wheel is such that it would have to be replenished so substantial delay would be experienced in order to select an array in New Haven that had no names of those who participated in the prior jury selection in this case, and the conduct of jury business in this district seems to me, counsel, strongly against that type of delay. So that factor was also part of my decision. All right.

MR. ZELDES: There was one other matter. I don't know whether you want to rule on it now or not. We submitted a brief on the tape involving the conversation between Mr. Gianotti and Mr. Dwyer. It's not necessarily ripe now but it's the kind of thing that if it's not handled

and the duplicate original 3-A contain the recorded remarks of you and Agent Hanley and Mr. Dwyer?

A Yes, they do.

Q But the transcript reflects what was said thereafter?

A Right; yes.

Q Okay. When were the duplicate copies, that is Exhibits 2-A and 3-A, made, if you can recall?

A To the best of my recollection, the next day.

Q By whom?

A I made them.

Q After you finished making the originals--I'm sorry--the duplicate originals, what did you do with the originals?

A With the originals?

Q Yes.

A I gave them to Agent Slifka, who was the case agent.

MR. COFFEY: I believe that finishes my inquiry of this witness, your Honor.

CROSS-EXAMINATION

BY MR. ZELDES:

Q May I have any notes that you made at the time of this interview, Officer?

A Any notes?

Q Notes.

A Do I have any notes? No.

Q Did you make notes?

A Yes.

Q Do you have those notes anymore?

A No.

Q You destroyed those notes?

A I did.

Q When did you destroy the notes?

A I can't say specifically but it would have been within five days after I made them.

MR. ZELDES: In view of that, if your Honor please, I move that the testimony be stricken.

MR. COFFEY: Object, your Honor.

THE COURT: Well--

MR. COFFEY: I haven't inquired along these lines. I think Mr. Zeldes is entitled to go into this area, and I have some questions, and at that time maybe--

THE COURT: On the present record the motion is denied. Either side is free to develop the issue further.

BY MR. ZELDES:

Q You stated, I believe, sir, that you saw Mr. Dwyer on June 22nd; is that correct?

A That's correct.

THE COURT: Yes, I'm aware of it.

REDIRECT BY MR. COFFEY:

Q What is a 302 in the language of the FBI?

A It's a form that we use to reduce our notes to writing for permanent record which we include in reports and memorandum that we prepare.

Q Did you in fact reduce your notes to a form 302?

A I did.

Q And what--at the time you made these notes and then made your 302, what was the practice of your--your practice in keeping or not keeping your notes once they had been transcribed or put down into a 302?

A We were under instructions that our notes be destroyed when the 302 was prepared.

MR. COFFEY: Your Honor, that 302 has been supplied to the defense.

BY MR. COFFEY:

Q I suppose I should have asked you this the first time, Agent Puckett. Did you test the equipment you used on June 22nd to determine if it was in proper proper working order prior to using it?

A Yes, I did.

Q And was the equipment in proper working order?

where the agents told him not to go outside. That conversation.

MR. COFFEY: He's already testified to that.

THE COURT: In any event, if you want to offer that fragment to make it complete, I don't suppose there will be any problem with that. Is there any voir dire you want of this witness? That's why I excused the jury, I thought you wanted a voir dire of the witness.

MR. ZELDES: No further than that we had. I thought this should be brought up and the case should be discussed in the absence of the jury. Our motion was to strike the testimony under the case.

THE COURT: Well, it remains the law, the law of the Second Circuit until I'm advised to the contrary that the destruction of hard written notes upon the preparation of a typed 302 is not grounds for striking the testimony. It's been the law of the Circuit and I'm not aware of any change in the law of the circuit.

MR. ZELDES: I have nothing further, then, of this witness. If your Honor is going to rule that way consistently, may I have the same objection without going through the claim to strike with respect to the other agents?

THE COURT: Yes. I take it you make no claim that the 302 is in some way a defective rendering of his notes. Your claim is simply to the fact that the handwritten notes were destroyed; is that correct?

MR. ZELDES: Yes, except that we cannot take a position as to whether it's accurate because they're not here.

THE COURT: The witness is here and is under oath and he can be asked questions. I take it you're really not doubting that he transcribed it, you're just complaining that you don't have the handwritten notes?

MR. ZELDES: That's right.

THE COURT: Then we don't need to have further voir dire of the witness. The witness is excused.

Thank you Agent Puckett.

(The jury returned to the courtroom.)

MR. COFFEY: Agent Slifka.

S T E V E N J. S L I F K A, New Haven, Connecticut, called as a witness by the Government, being first duly sworn, testified as follows:

THE CLERK: State your full name for the record, please.

THE WITNESS: Steven J. Slifka.

THE CLERK: And your address?

THE WITNESS: New Haven, Connecticut.

DIRECT EXAMINATION

BY MR. COFFEY:

Q Would you please tell us how you're employed?

A Employed as a Special Agent of the FBI.

A I did.

Q When did she arrive?

A I would estimate approximately 5:30.

Q Was she downstairs, if you recall, or upstairs when the telephone rang? This is after Mr. Rubbo left and after your confrontation.

A She was upstairs on the second floor.

Q Did you go upstairs yourself and monitor in or listen in or attend whatever was being done with respect to that telephone call?

A I did not.

MR. COFFEY: Thank you.

CROSS-EXAMINATION

BY MR. ZELDES:

Q Agent Slifka, how long did you say you've been with the FBI?

A I've been a Special Agent of the FBI for 28 years.

Q And were you the officer who was in charge of this case from the Bureau's point of view?

A That's correct.

Q And in the course of this, did you make any notes, keep any records?

A I made some notes, yes.

Q Do you have those notes with you now?

A I destroyed them.

Q And when were they destroyed?

A They were destroyed immediately after I prepared--I dictated from my notes so that a final transcription could be made.

Q About when was that?

A Within--between June 22nd and June 27th.

Q Do you have any record of when your notes were thrown out?

A No, I do not.

Q At any rate, you threw out the notes while you knew that charges were pending against Mr. Nase; isn't that right?

A I did, yes.

Q Isn't that correct?

A That is correct.

Q Now, when you first got to the premises, what time was that?

THE COURT: Let's be clear as to what he's talking about when you say, after you prepared a transcription.

THE WITNESS: After I dictated. I dictated to a stenographer from my notes for the 302 to be prepared, yes.

THE COURT: Are you talking about what's been referred to as a transcription of tape recordings?

THE WITNESS: No, I'm not.

THE COURT: That's something altogether different.

THE WITNESS: That's correct.

THE COURT: You're talking about your own handwritten notes of what you did or what anyone may have said to you?

THE WITNESS: Right.

THE COURT: And you dictated an account of that into a dictating machine?

THE WITNESS: To a stenographer, yes.

THE COURT: And somebody typed up your dictation?

THE WITNESS: That is correct.

THE COURT: And that's the 302 report?

THE WITNESS: That is correct.

THE COURT: All right.

BY MR. ZELDES:

Q Now, when was it that you threw out the original notes, after you typed up this report or had it typed up?

A Immediately after the dictated notes were then transcribed by a stenographer.

Q And did you check over your dictated notes to see that they were the same as your notes?

A Yes.

Q Now, I think you identified Government Exhibit 1 as the premises of Mr. Dwyer; is that true?

A Government Exhibit 1, yes.

Q Can you tell the ladies and gentlemen of the jury what's the first time you appeared at those premises?

with Mr. Papagoda in 1972?

A Not--no, sir.

Q Did you have any occasion to have a personal relationship with Mr. Papagoda?

A Yes.

Q Friendly or personal?

A Yes.

Q Would you please tell us if you, in 1972 had occasion to place any wagers?

A Yes, I did, in August for about five or six weeks. I don't know exactly how long I was placing bets with him.

Q In person or telephonically?

A Both.

Q With respect to the personal wagers, where did you meet with him to place these wagers?

A Where did I meet with him? Either at the gas station or in the restaurant, or call him on the phone.

Q What type of events were you betting on?

A At that time it was baseball. Baseball.

Q And how long a period of time did you wager with him?

A Approximately five weeks.

Q By the end of the five weeks had you wagered, if you can recall, on anything besides baseball?

A Exhibition games around then, they are just beginning.

Q Are these professional or collegiate?

A Professional.

Q Did you keep any records reflecting who won or who lost?

A At the end of five weeks, I was the loser.

Q Did you keep any records at that time as to what wagers you had placed?

A Yes, at that time I did.

Q Do you still have those records?

A No, sir.

Q What happened to those records?

A I think I threw them away or they disappeared.

Q How long ago?

Q That was four years ago.

Q Do you recall the approximate amount of money you either won or lost?

A At the end of the five weeks I was down approximately $1250 or $80. I paid him about $285, and I told him that I would make weekly terms to pay the balance.

Q How much do you approximate you had not paid and remained outstanding by the end of September?

A I believe there was a balance of approximately a little under $1000.

Q Now, in 1973, the following winter, directing your attention to January or February, did you have any association or relationship with Mr. Papagoda of a business nature?

A Yes, in the early part of January or February, I don't know exactly which month it was, I met him and he was telling me about some tax problems that he was having.

THE COURT: Is this now '73?

THE WITNESS: Yes, sir.

BY MR. COFFEY:

Q Do you recall what month that was?

A I believe it was the latter part of January.

Q All right. And did you in fact do work for Mr. Papagoda?

A Yes. I did some work for him in March. I did his tax return, and the gas station's tax return.

Q Did there come a point in time after the first month or two months, January, February of 1973, that you again engaged in placing wagers with Mr. Papagoda?

A Yes, in the later half of the year, yes.

Q In 1973 or 1974?

A I believe it was 4.

Q Would you please indicate to us how that relationship started?

A He asked me if--he said, "Branford is now," and

he asked me if I knew anybody that would place bets and that if I worked for him, I'll get 25 percent of the losing bets.

Q At this time, that is in 1974, perhaps you should tell us what month this was, if you recall?

A No, I don't.

Q Do you know what time of year it was?

A It was around the fall; just beginning of the fall.

Q All right. Did you, at this time in the fall of 1974, still owe Mr. Papagoda a little bit under $1000 for 1973?

A I was under the impression that he forgave that tab because I was doing accounting work for him.

Q All right. Now, describe exactly what it was you were doing in placing of wagers with Mr. Papagoda in the fall of 1974?

A What I was doing is, couple my friends and other people in town were placing bets with me and I would in turn, would place them to him, and then I would get 25 percent of the losers.

Q And how long did you place wagers with Mr. Papagoda in 1974 of this nature?

A A little bit over a month, I guess.

Q At the end of that month period, were the--whose account was ahead, if I can put it that way?

A Eddie's account was ahead.

MR. ZELDES: Excuse me, please, I'm going to

object to this testimony, your Honor, as being outside the scope of the pleadings. It's not charged. The debt that's alleged here is a $985 debt that's referred to; the witness said was forgiven.

MR. COFFEY: The witness said that he thought it was forgiven, your Honor.

THE COURT: In any event, what is the objection?

MR. ZELDES: The objection is that this testimony is irrelevant. The only claim alleged by the Government is the $985 claim.

MR. COFFEY: That's correct, your Honor, but our claim is that this individual thought it was forgiven but later found out, our proof is, it wasn't forgiven.

MR. ZELDES: Not the $985.

THE COURT: Is that the Government's claim? You seek to elicit additional testimony about it?

MR. COFFEY: We're eliciting total relationship with Mr. Papagoda of a gambling nature of this witness, to lay the groundwork for subsequent conversations this witness had with someone else; the defendant.

MR. ZELDES: That's what I object to, if your Honor please. They alleged $985, and now they are bringing in something that's not involved.

THE COURT: That's the part I have trouble understanding. The prosecutor doesn't agree with your

characterization that it's not involved. He says he can show it is involved. Is that the claim?

MR. ZELDES: If he can offer to tie that in, that's different.

MR. COFFEY: My claim is that our proffer is that at a later time there will be testimony from a witness that there was a conversation with a defendant where the sum was disputed, and in which this witness was told there is still an outstanding debt.

THE COURT: And that the allegations in this case relate at least in part to that debt?

MR. COFFEY: Relate to his association with Mr. Papagoda. But our proffer is it was not determined in those conversations; never settled firmly when they took place, as to how much he owed or for what particular wagers were involved. Only that he did owe some money and it was in a certain amount which was disputed.

THE COURT: And they arose out of this relationship?

MR. ZELDES: If your Honor please, it's not out of the 985.

THE COURT: Apparently, he says that's what was never made clear.

MR. ZELDES: The witness has testified, as I understand his testimony, that the 985 was forgiven.

or in person?

A Both.

Q Directing your attention to the end of May, May 30, 31, 1976, do you recall whether you were ahead or behind in your wagers with Mr. Gianotti?

A I was ahead $1,600 and change.

Q Had you or were you paid by Mr. Gianotti for the wagers which you successfully placed?

A No, sir.

Q Did you request payment?

A Yes, I did.

Q Did you keep any records of those wagers for that eleven-day period or so?

A Not on me, no.

Q Do you have any records today of your wagers with Mr. Gianotti?

A No, sir.

Q Do you recall on how many occasions, if more than one, you requested payment from Mr. Gianotti?

A I called him every day from May the 28th to about June the 4th. And he was telling me that he'd be over today or tomorrow. He told me that there was also a mix-up on the tab that he would have the money. He would drop it off at the house or office.

Q What was the amount of how much he owed?

A First it was $1000 and the following week I won $685.

Q How many wagers did--does this amount represent?

A Quite a few.

Q Do you have any idea what your average wager was?

A It's about 100 to $200--to 100 and a-half a game at the most.

Q On June 5, 1976, what day of the week was that?

A It was the end of the week.

Q What day?

A It was a Saturday.

Q Did you have a conversation or talk to Mr. Gianotti on the 5th of June?

A Yes, I did.

Q What was your conversation?

A He said that he would be over the house that night and pay me.

Q Did you place any wagers with him on Saturday?

A Yes, I did.

Q What type events?

A Baseball games.

Q How much did you wager?

A I wagered approximately $1800.

Q To get some idea, how many baseball games were you betting on?

A At that time, I bet two games in the afternoon and about four games at nighttime.

A Were you successful, that is, were those winning wagers?

A No, sir.

Q How much did you lose?

A I lose? It came out that I lost approximately $1600.

Q And as set against what you were running ahead a few days earlier, how much , as of say Sunday morning, were you in the red or black?

A It was just about even.

Q Did you talk to Mr. Gianotti on Sunday the 6th?

A Yes, I did.

Q Did you place any wagers with him?

A Yes, I did.

Q In what amount?

A I placed Dark Dash. I bet about five times and I lost approximately $4000.

Q And let me ask you this: In placing a wager on a baseball game, you necessarily know when you place the wager, how much you're going to win or lose?

A Yes, you do.

Q Describe to the jury, if you can, so that it can be understood perhaps by someone who has not done this, how one bets on a favorite in a baseball game.

A If the favorite team, we'll say, is the Yankees, and if it's 8 to 5 odds, that means that if you bet--if you want to win $50 on the Yankees, you would have to put up $80. If you lose, you owe $80. If you win, you only get $50.

Q All right. So, because of the nature of baseball, what you theoretically could win is usually not the same amount as to what you theoretically could lose?

A Yes, sir.

Q As of Sunday evening how much money were you in debt to Mr. Gianotti; Sunday being the 6th of June?

A A little over $4000.

Q Did you hear from Mr. Gianotti on the 6th or thereafter?

A That was a Sunday. I talked to him--he called me the following day which was a Monday. I was not home and he left word that my winnings from the week before, I could pick up at a number. And I called that number and it was a non-operable business number.

Q Was there any discussion about how much you

had lost?

A Not on that day, sir, no.

Q Did you have an occasion to talk to him after the 6th?

A Yes.

Q Or the 7th?

A Yes, I talked to him on the 8th which is a Tuesday.

Q What did you discuss?

A He told me that the tab was $4000 and he was tied up with some serious people and I'm going to have to make some fast terms.

Q What did you indicate to him?

A I told him that since I haven't been paid for the amount of money that I lost, that I'm going to need a little bit of time.

Q And what did he respond to that?

A He said he will call me tomorrow.

Q Now, directing your attention to June 15, 1976, what day of the week was that?

A That's a Tuesday.

Q Did you go to your office that day?

A Yes, sir.

Q In the morning?

piece of equipment, and we don't have that. Let me ask Agent Puckett whether we have it or it can't be as easily used.

MR. COFFEY: I was in error. We can play the originals of the telephone. We can play the original of the body recording but it will require playing it on it's own self-contained device. We don't know if the audibility will be enough for the jury to hear. But at least--

THE COURT: Let's find out.

MR. ZELDES: Your Honor, my comments with respect to 2-A would also apply to 3-A which is another duplicate. I think I only--

THE COURT: At the moment I understood he's endeavoring to play originals.

MR. COFFEY: That's correct.

MR. ZELDES: I thought he was checking to see if he could; he previously represented he couldn't.

MR. COFFEY: Agent Puckett has left to get the recorder and the playing machine. He has it. I suggest, your Honor, the most expeditious way would be to complete my examination on other matters and at least play the first telephone call and then perhaps take a recess while we set up the body recorder. We are going to have to do that anyway because I want to play them chronologically.

MR. ZELDES: Can I ask one other thing, if your Honor please, whether or not you've made a definite ruling

with respect to the third recording, the telephone conversation between Mr. Gianotti and Mr. Dwyer. That hasn't been marked yet as a full exhibit and I wonder if your Honor ruled.

I urge your Honor for the reasons I've previously advanced in the brief that it's not admissible but I wasn't sure you had everything you wanted from the parties before you made a ruling on that.

MR. COFFEY: I wasn't going to offer it, your Honor, until I elicit from the witness at least several responses that will place the telephone call in the context of the existing debt.

MR. ZELDES: Existing what?

MR. COFFEY: Existing debt as to what--as opposed to what you claim to be a future debt.

THE COURT: Well, if that's the only issue as to whether the Gianotti conversation should be excluded because it relates only to threats that would be used to collect a future debt and bears no relationship to threats in connection with the present debt, that objection is just not well taken based on the face of the transcript itself.

MR. ZELDES: I didn't mean that to be my only--you have all of the other objections that we have raised in brief. I understand that your Honor's ruling is that it's being admitted because it's a verbal act.

THE COURT: That's right.

Q Was the device still in the telephone?

A I don't believe so.

Q Upstairs. By "on" I don't mean activated. Was it still connected?

A It was on the phone; yes, it was.

Q Did there come a time when that device was activated again?

A Yes, there was.

Q Who activated it?

A The FBI agent.

Q What happened which caused him to activate it?

A I received a telephone call.

Q Who answered?

A Malinda Ramsby.

Q And did she, without telling us what she said, did she engage someone in conversation?

A Yes, she did.

Q Approximately for how long?

A About a minute at the most, maybe a minute or two.

Q Was the device activated while she was talking, if you know?

A Yes, it was.

Q You're sure?

A I'm positive.

Q And did you get on the phone?

A Yes, I did.

Q And did you have a conversation with someone?

A Yes, I did.

Q You recognized the person at the other end of the line?

A Yes, I did.

Q Who was that?

A Eddie Gianotti.

Q Did you have a discussion with Mr. Gianotti?

A Yes, I did.

Q All right. What did that discussion or what was the subject matter of that discussion?

A He wanted to know if I met with Mr. Mase that day.

Q Do you know if he mentioned Mr. Mase by name?

A I don't believe he did.

Q What did you indicate to him?

A I told him that I did not.

Q All right. And can you tell us the general subject matter of the conversation that ensued?

A He told me not to run from him that I should definitely give him a call, not to tell him where I was, that I would have to pay him.

Q And did he indicate to you--what else was said to you by him

concerning how you were to work yourself out of this situation?

A He offered me another plan. He said that I can pay him $200 a week.

Q All right. Was there any discussion as to how much you presently owed?

A Yes, there was.

Q How much?

A $4,000.

Q Was more than one alternative given to you as to how you were to meet this obligation?

A Yes, there was.

Q What was the other alternative?

A That I can get another loan or a new loan he mentioned.

Q In what amount?

A $4,000.

Q Was there any interest discussed?

A Yes, there was.

Q How much?

A $800, I believe it was.

Q All right.

A Or five percent; I don't remember.

Q Did Mr. Gianotti indicate to you, if you recall, what would happen to you if he did not pay the existing debt?

A I believe he said that these people are crazy and they would kill me.

MR. ZELDES: I'm going to object to this. This is a summary and what he believes is inadmissible, if your Honor please. It doesn't mesh exactly with the material that's going to be offered in evidence and I think that it's inadmissible for him to summarize it in this fashion--for the Government to elicit. I ask that it be stricken.

MR. COFFEY: I'm eliciting, your Honor, in order to establish the relevancy of the conversation itself.

THE COURT: Well, the grounds stated is not well taken. He's not endeavoring to summarize; he's recalling what was said. He hasn't purported to summarize. He's given certain items that, according to him, were said. So the objection that it's a summary is not well taken.

MR. ZELDES: I believe his testimony was, I believe that they were saying such and such. And the testimony of that kind is what I had in mind, if your Honor please.

I think he should be asked in a non-leading way what was said and what he responded.

THE COURT: Well, the leading question objection is not well taken. The fact that he prefaces his answer by saying, "I believe," this is what was said, certainly doesn't make the answer inadmissible. Those objections are not well

taken and they are overruled.

MR. ZELDES: Thank you.

BY MR. COFFEY:

Q Mr. Dwyer, how long was your conversation with Mr. Gianotti?

A It's hard to say. About five minutes, four minutes.

Q After it ended what did Agent Puckett proceed to do with respect to the device on the telephone, if anything?

A He turned it off.

Q Let me get on a different area for a minute. Between 1971 and 1974, did you have occasion to receive any money from the government?

A Yes, I did.

Q And approximately what amount?

A Approximately $2000.

Q From what agency?

A The FBI.

Q For assistance in what area?

A What area, how? What do you mean by "area"?

Q All I'm asking you is, without telling us specifically what the information was, what was the money given to you for?

A For helping in giving them information.

MR. COFFEY: That is correct.

THE COURT: Well, for the present time I'm going to admit the second conversation on that tape only on Count 1 so that--well Exhibit 2 can be marked as a full exhibit but let me explain to the jury what the situation is.

As I'll say to you more fully when I come to explain the details of the allegations in this case, there are two different offenses charged against the defendant in this case.

Just to refer to them quickly, one is a conspiracy count and one is a substantive count and I'll say more about what those words mean later on.

The first tape that's being marked, Exhibit Number 3, which, according to the testimony, is the tape obtained from the body recorder device that Mr. Dwyer wore, that tape is a full exhibit in the entire case.

Tape 2, according to the testimony, is a tape of two telephone conversations, one with Mr. Mase, and one a little later with Mr. Gianotti. The telephone conversation with Mr. Mase on Exhibit 2 is to be considered for all purposes in the case on both counts.

For now, and unless I tell you to the contrary, the telephone conversation with Mr. Gianotti on Exhibit 2 is admissible and to be considered only on the conspiracy count which is Count 1, and not the substantive count which is

Count 2.

(Government's Exhibit Number 2 for identification, a tape, was received in evidence.)

MR. COFFEY: At this time, your Honor, I request that we be allowed to play the first conversation on Exhibit 2. That's the telephone conversation between Mr. Dwyer and Mr. Mase, and for purpose of playing that conversation shall the Government be allowed to give to the jury copies of Exhibit 2-B, which is a transcript.

THE COURT: All right. So you're offering 2-B.

MR. COFFEY: Yes.

THE COURT: Any objection to that?

MR. ZELDES: I didn't get the right sequence. Yes, I do object to handing out a transcript, if your Honor Please. I think that it places undue significance to evidence. There's no other type of evidence that the jury will have the transcript of from any live testimony in this court.

The jury has perfectly good ears. They can listen to the recording. They listened to the witness and there's no reason to differentiate this recording from any other testimony that comes in and afford a copy of the transcript.

In addition to which, the transcript is not complete, as I said before. The transcription, I guess is

A I might have, yes.

Q And did you tell the FBI that there was a similar debt for Mr. Horton of $100?

A Yes, sir.

Q Now, yesterday when you talked to Mr. Coffey under direct examination you made some reference to a conversation in June of 1973 in which Mr. Papagoda told you that he was forgiving this gambling debt; do you remember that?

A Yes.

Q And that's the truth, he did forgive it, didn't he?

A That's what he told me.

Q And he told you that Dwyer could forget about the past tab which you understood to mean the gambling debt of $985?

A Yes, sir.

Q He forgave that, didn't he?

A He told me he did, yes.

Q And was there another time that he confirmed that he forgave that gambling debt?

A I believe there was, yes.

Q Mr. Coffey didn't ask you about that second forgiveance, if I use the word right, forgiveance of the gambling debt, did he?

MR. COFFEY: Objection.

THE COURT: Sustained.

BY MR. ZELDES:

Q Do you recall testifying about the second forgiveness yesterday?

A No, sir.

Q And it's true you didn't mention it yesterday, isn't that correct?

MR. COFFEY: Objection, your Honor. It wasn't asked.

MR. ZELDES: I still have a right to mention it.

THE COURT: You asked him--I don't know what you're asking him at this point.

BY MR. ZELDES:

Q Let me ask you this. You recall now that there was a second time that this debt was forgiven?

A Yes.

Q And when was that?

A It might have been this year. I think it was either May or I don't remember exactly when it was, sir.

Q Do you remember telling the FBI that during the first week of May, 1976, you ran into Mr. Papagoda at the station?

A Yes.

Q And that Mr. Papagoda said, "Never mind the gambling," and he forgave you for this again; do you remember that?

A Yes, sir.

Q And you told the FBI about that on June 22nd didn't you?

A Yes, sir.

Q Now, at that time when that gambling debt was forgiven, Mr. Papagoda asked you to pay some other debts, didn't he?

A Other debts?

Q Yes. Didn't you tell the FBI that in May of '76 Mr. Papagoda entered Dwyer's car, that's you, isn't it?

A Yes, sir.

Q And told you that you owed him $3,325; do you remember that?

A I don't remember Mr. Papagoda entering my car and tell me. That was by Mr. Mase who told me that.

Q Well, showing the statement to the FBI, didn't you tell the FBI on that time in May of 1976 that Papagoda entered the car and said he owed you $3,325? You told the FBI that, didn't you?

A That's what I said.

Q And that's May of 1976, isn't it?

A Yes, sir.

Q And that's before you ever heard of Edward Mase isn't it?

A Correct.

Q And that's the amount that you told the FBI that Mr. Papagoda told you in May of '76 was due?

A Yes.

Q Correct?

A Yes.

Q Now, it's at the same time he said, "Forget about the gambling debt," isn't it?

A Right.

Q And he told you, "Pay me what you owe me and give me $10 to $20 a week on account; that was the May '76 statement wasn't it?

A Yes.

Q Did you ever start paying him the 10 or $20 a week?

A No, sir.

Q And you never disputed this $3,325 being due at that time when Mr. Papagoda came in the car, did you?

A When he mentioned it, no, sir, but as I was driving away I couldn't figure out the tab; I couldn't add it up.

The way the board is now I don't think either side is visible, so I think we can leave it. I think that's adequate.

MR. COFFEY: Does the defense concede that that does not completely state what Section 891 is?

THE COURT: There doesn't have to be any argument about it.

(Whereupon, the jury entered the courtroom.)

THE COURT: Well, first of all, Mr. Lazzari, the alternature juror, as you may have surmised from the fact that your lunch order wasn't taken, you're not going to be part of the jury any longer. I do want to thank you for your attention to the case. Obviously, your staying with us to this point gives us the insurance that we'll have a jury of twelve when it comes time for the jury to deliberate, but since we do have all twelve at this point, I'm going to excuse you. If you want to stay in the courtroom, you're welcome to, but I will excuse you from the jury box at this time.

All right.

(Whereupon, Mr. Lazzari left the courtroom.)

THE COURT: Now, ladies and gentlemen, you heard the evidence in the case and you heard the summations of the government attorney and the lawyer for the defense. Now it's my task to give you the instructions of law that

govern this particular case.

When it comes to the rules of law, it's the function of the Court to tell a jury what the rules of law are, and you're obliged to accept those rules of law and apply them to the facts of the case. You can't apply the rules of law that you think perhaps should apply. You have to take these rules of law and apply them, and I suggest that you take the instructions in their entirety and not consider any one portion to the exclusion of any other portion. Consider the charge as a whole.

Now, when it comes to deciding the facts of the case, that's entirely your task. You've heard the evidence. You observed the witnesses and you're the fact finders in the case. If the lawyers mentioned any fact, and it's different from the way you find the facts to be, you rely on your own recollection of the testimony and your own determination of the facts, and that applies to any reference that I should make to the facts, if I do by way of illustration or to indicate what the claims are in the case. The sole responsibility to find the facts is yours.

Now, in the course of the trial there were objections by counsel or situations where we needed to discuss something at the bench where the jury was excused, in those situations the lawyers for both sides are exercising proper court procedures, exercising the rights of their parties

and, of course, nothing should be taken against them because they want to bring to the attention of the Court matters that properly deserve the Court's attention and happen not to be matters that need concern the jury.

Now, in general, there are two types of evidence you can consider. One is called direct evidence. That means what somebody saw with their own eyes or in some situations what somebody may have heard. And the other is circumstantial evidence, and that simply means facts proved from which the jury can infer, if it chooses to, by a process of reasoning other facts that are sought to be true, and of course, different inferences may be drawn from whatever facts you find are established.

As to some matters, the prosecution asks you to draw one set of inferences and the defense asks you to draw another set of inferences. It's for you to decide what inferences you think reasonable and proper to draw from the facts as you find them.

Circumstantial evidence may be received and considered and is entitled to whatever weight you think it deserves; no greater degree of certainty is required when evidence is circumstantial or direct or with either type evidence there cannot be a conviction in any count unless you are persuaded beyond a reasonable doubt from all the evidence as to that count of the guilt of the defendant.

Now, in this case, as in every criminal case, the defendant is presumed to be innocent unless and until proven guilty beyond a reasonable doubt. That presumption of innocence was with him when he was first presented for trial and it continues with him throughout the trial. As far as you are concerned, he is innocent and continues innocent unless and until such time as all the evidence produced in the trial and considered in the light of these instructions satisfies you beyond a reasonable doubt that the defendant is guilty of the particular offense as charged.

Now, the burden of proving the defendant guilty rests on the government. The defendant does not have to prove his innocence. That means that before you may find the defendant guilty of any count, the government must prove to you beyond a reasonable doubt each and every element necessary to constitute the crime charged.

Whether that burden of proof has been sustained depends not on the number of witnesses nor on the quantity of the testimony but on the nature and the quality of the testimony.

Now, a reasonable doubt means a doubt founded upon reason, as the words suggest. It is a doubt, as will be entertained by a reasonable person after all the evidence in the case is carefully analyzed, compared, and weighed. A reasonable doubt may arise not only from the

evidence produced, but also from a lack of evidence.

Since the burden is on the government to prove the defendant guilty beyond a reasonable doubt of every element of each crime charged, a defendant has a right to rely upon a failure of the prosecution to establish such proof. However, absolute or mathematical certainty is not required, but there must be such certainty as satisfies your reason and judgment and such that you feel conscientiously bound to act upon. It is not a fanciful doubt or a whimsical or capricious doubt, for anything relating to human affairs, and depending upon human testimony is open to some possible or imaginary doubt. A reasonable doubt is such doubt as would cause a prudent man to hesitate before acting in matters of importance to himself or herself.

So, if the evidence warrants, in your judgment, the conclusion that as to any particular count the defendant is guilty so as to exclude every other reasonable conclusion, you should declare him to be guilty on that count.

On the other hand, if on all the evidence you have a reasonable doubt as to -- as to the guilt of the defendant on that count, then you must find him not guilty on that count, and in discussing the elements of the offenses, which I'll come to, I want to emphasize that each element must be proved beyond a reasonable doubt. I may not repeat

that each time I refer to an element, so I want to make it clear, in general, that every element of each offense must be proved beyond a reasonable doubt before there can be a conviction on any count that you're considering.

Now, in determining whether the burden resting on the government has been sustained, one of the things you will be concerned about is the credibility of the witnesses you heard, their believeability, and there are various considerations. You're entitled to have in mind, when you make the judgment for yourselves as to whether or not you find the witnesses credible. You can consider the appearance of the witness on the stand, try to size the person up. Did he appear to be telling the truth? Did he appear to be honest? Did he appear to be a person who was in a position to observe accurately what he's telling you about? Who was likely to have remembered it accurately, and capable of reporting it to you accurately? You can consider whether the testimony of a particular witness you're considering is plausible. Does it ring true? How does it fit in with other evidence in the case which you are persuaded is so? The testimony of any witness may be discredited or impeached by showing that on a previous occasion he made a statement that was inconsistent with his present testimony.

Now, the fact that a witness may have been mistaken in part of his testimony certainly doesn't mean that

he's necessarily mistaken in other parts of his testimony. If you should find that a witness has been deliberately falsifying on any material point in his testimony, then you can take that into account in determining whether he's falsified on other points.

A witness might be honestly mistaken on one point and accurate on others. It's possible that a witness is even deliberately falsifying on one point and yet truthful on others, but you're entitled to consider, in weighing credibility, whether a witness did say inconsistent things on previous occaions, and if you find a witness has told a deliberate lie on a material subject, it's only natural you'd be suspicious of all of his testimony and you'd be entitled to disregard his testimony.

You're also entitled to consider as to any witness whose testimony you heard whether that witness has any bias or interest in the outcome of this case, may have affected or colored his testimony either deliberately or inadvertently. Now, it doesn't follow simply because a witness may have some bias or interest in the outcome of the case that his testimony is to be disbelieved. There are many people who, no matter what their interest in the outcome of the case, would not testify falsely, but bias or interest in the outcome is always a circumstance that a jury should have in mind when they're considering the credibility of a witness.

Now, in addition to all the considerations I've indicated you're entitled to have in mind, you should bear in mind with respect to the testimony of Paul Dwyer that there was evidence that on previous occasions he has received payments from the Federal Bureau of Investigation in exchange for supplying them with information, and you are also entitled to consider the fact that he has not been prosecuted for any violations of gambling laws or even possibly income tax laws, if there were any income tax violations arising out of the episodes you heard.

When someone furnishes information to the government and receives money, that doesn't disqualify him from being a witness, but it's a circumstance that you ought to bear in mind in assessing his testimony. There's always the possibility that a witness either deliberately or inadvertently may think that he needs to say certain things to please the government if he's to receive money in the future. I'm not suggesting that that is so in this case or that it's not so. I'm simply pointing out that that's a circumstance you're entitled to consider in judging credibility.

When you come to judge the credibility of the law enforcement officers who testified, I suggest to you that their testimony should be considered in the same light as any other witness and no particular significance, either in their favor or against them, should attach to their testimony

simply because they're law enforcement officers.

So, in general, when you decide the credibility of all the witnesses you heard, apply the same considerations of common sense and sound judgment that you would apply in making decisions about truth and veracity on issues that come up in your every day lives.

Now, let me mention particularly a point concerning the defendant Edward Mase. The defendant did not testify in this case, and I reemphasize what I told you before you were selected as jurors, that every defendant has a Constitutional right not to testify, and it is the law that no presumption of guilt or any unfavorable inference may be drawn against a defendant if he exercises his Constitutional right not to testify.

You must not permit that fact to weigh in any way or degree against the defendant and it must not enter into your discussions or your deliberations. The defendant is not required to establish his innocence, as I've told you. He need not produce any evidence, if he chooses not to. The burden is on the government to prove his guilt beyond a reasonable doubt.

Now, this case involves criminal charges brought against defendant Edward Mase. Two violations are set forth in the indictment and you will have the indictment with you in the jury room, and I'll take them up in detail in

just a moment, but let me first say a word about the indictment.

The indictment is simply the formal means of accusing a defendant of certain crimes; it defines the crimes and the manner of their alleged accomplishment. The indictment is not evidence and it is without any bearing or significance in your consideration of this case and is to be accorded no weight in determining guilt or innocence.

By his plea of not guilty, the defendant has denied each and every allegation set forth in the indictment.

Now, there are two violations charged in this indictment. One is a conspiracy violation and the other is what is called a substantive violation. Both counts charge violations of the same section of the Federal Criminal Code. The section provides as follows: It's very brief. Let me read it to you.

It says, "Whoever knowingly participates in any way, or conspires to do so, in the use of any extortionate means to collect or attempt to collect any extension of credit shall be punished."

Count 2 of this indictment charges that defendant Mase violated the section by participating in the use of an extortionate means to collect or attempt to collect an extension of credit.

Count 1, the conspiracy count, alleges that defendant Mase conspired with Edward Gianotti to commit the offense alleged in Count 2.

Let me take each one up in detail, and I think it will be helpful if I discuss Count 2 first, that is, the substantive count.

There are three elements of the offense charged in Count 2, each of which the government must prove beyond a reasonable doubt before there can be a conviction on that count. They are:

1. That there was an extension of credit to Paul Dwyer.

2. That the defendant participated in the use of an extortionate means to collect or attempt to collect the extension of credit;

3. That the defendant acted wilfully and knowingly.

Let me explain some of those terms in a little more detail.

To extend credit means to make or renew any loan or to enter into any agreement, tacit or express, whereby the repayment or satisfaction of any debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, would be deferred. Thus, there are two ways an extension of credit can be created. One is by a loan and the

other is by an agreement to defer repayment of a debt.

In this case, the government alleges that an extension of credit was created when Dwyer, in early June of this year, made various bets with Edward Gianotti which turned out to be losing bets. The government contends the amount of bets that were lost was approximately $4,000. The exact amount doesn't matter. And it is the government's contention that as a result of this betting, Dwyer owed Gianotti approximately $4,000.

Now, this phrase "extension of credit" is not a technical phrase. It includes arrangements whereby credit is extended from one person to another, either by a loan or an agreement to defer repayment of the debt or both. It is not necessary that money change hands. If you find that Dwyer bet with Gianotti and that Dwyer lost his bets and that as a result of that betting Dwyer owed Gianotti a sum of money, then you would be entitled to conclude that an extension of credit, within the meaning of the statute, was created.

The government so contends there was another extension of credit that was created earlier as a result of losing bets Dwyer made with Edward Papagoda. The government alleges that this extension of credit totaled about $985. The defendant contends that if there ever was an extension of credit as a result of wages placed with Papagoda, that debt was

forgiven. It is not necessary for the government to establish that there were two extensions of credit. If you find beyond a reasonable doubt that there was an extension of credit with respect to either a wagering debt owed to Gianotti or a wager debt owed to Papagoda, you would be entitled to conclude that the first element of the oath is established for the purpose of Count 2.

As to Papagoda, I caution you that only an extension of credit concerning a wagering debt would qualify as an estension of credit for purposes of Count 2.

Now, the second element in Count 2 requires that the defendant be shown to have participated in the use of extortionate means to collect or attempt to collect an e xtension of credit. To participate simply means to take part in, to join in or to aid in. The phrase "extortionate means" is defined as any means which involves the use, or an express or implicit threat of use, of violence to cause harm to the person or property of any person.

In this case, the government contends that the extortionate means used in an attempt to collect the debts was a threat to use violence on the person of Paul Dwyer. No particular words need be used to constitute an express or implicit threat of violence, nor is it required that you find that the words used actually instilled in Dwyer fear that violence would be used.

A threat, if you find that one was made by the defendant, constitutes extortionate means if the threat considered under the circumstances in which it was made, as viewed by the person making the threat, was reasonably calculated to make an ordinary person become fearful of violence, and if the person making the threat intended that the person receiving the threat would become fearful of personal violence. In other words, the issue is not whether Dwyer was actually in fear of violence. The issue on this point is whether Mase made a threat to Dwyer that was reasonably calculated to put Dwyer in fear of violence, and whether Mase intended that the threat would put Dwyer in fear of personal violence.

Finally, as to the third element that the defendant acted knowingly and wilfully. An act is done knowingly if it is done voluntarily and purposefully and not because of mistake, accident, negligence, or other innocent reason. An act is wilful if done deliberately and with evil motive or purpose. It is an act done with the specific intent of doing something that the law forbids.

Now, in considering whether knowledge and intent have been shown, you cannot obviously look into the defendant's mind to tell what he was thinking or intending, but a jury is entitled to infer from all the circumstances of what a person does and says whether he is acting knowingly

and wilfully.

Now, with respect to Count 2, the substantive count, in considering whether defendant Mase participated in the use of an extortionate means to attempt to collect a debt, extension of credit, you ought to consider only what Mase said to Dwyer and the circumstances, as you find them to be under which those statements were made.

Now, let me turn to Count1. That's the conspiracy court, and these are separate counts and you have to give separate consideration to each one and return verdicts on each one, and your verdict on Count 1 shouldn't influence your verdict on any other count. They are separate counts.

Now, there are four elements of this offense.

1. That the conspiracy charged in the indictment actually existed at the times alleged.

2. That the defendant Mase knowingly and wilfully became a member of the conspiracy.

3. That at least one member of the conspiracy committed at least one overt act in furtherance of the conspiracy; and

4. That the defendant acted wilfully and with specific intent.

Now, the conspiracy alleged in the indictment reads as follows:

"From on or about June 15, 1976, until on

or about June 22, 1976, at Branford, and New Haven, Connecticut, and elsewhere in the District of Connecticut, Edward V. Mase and Edward R. Gianotti conspired to use extortionate means within the meaning of Title 18, United States Code, Section 891(7), to collect and attempt to collect from Paul Dwyer, the debtor, an extension of credit, that is, a gambling debt, to wit: the defendants Edward V. Mase and Edward R. GIanotti conspired to make explicit and implicit threats of violence to cause physical harm to the person and property of Paul Dwyer, the debtor, for continued failure to pay fully a gambling debt.

So, the issue is: Was that conspiracy as described in the indictment formed and existing on or about the dates alleged?

Now, as to what a conspiracy is. Conspiracy is a combination of two or more persons by concerted action to accomplish some unlawful purpose by unlawful means. A conspiracy is in a sense a partnership in criminal purposes in which each member becomes the agent of every other member. The gist of the offense is the agreement to disobey or disregard the law. Mere similarity of conduct among various persons and the fact that they may have associated together and may have assembled together and may have discussed common names does not necessarily establish proof of the existence of a conspiracy.

However, the evidence in the case need not

show that the members entered into an express or formal agreement or that they directly, by words spoken, or in writing, stated between themselves exactly what their object or purpose was to be, or the means of achieving it. What the evidence must show beyond a reasonable doubt, in order to prove that the conspiracy existed, is that the members of the conspiracy, in some way or manner or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

So there must be an agreement to achieve the purposes of the conspiracy, whether that agreement rests on an understanding between the parties or is informally arrived at, but they don't have to write it out, they don't have to formally exchange vows or anything of the sort, but you can't find a conspiracy simply because two people may have been acting similarly or associated together. You must, before you can find the first element, establish, be satisfied beyond a reasonable doubt that from what the participants, who are alleged to have participated in this said or did, you must be satisfied that you can infer that there was an agreement between them to carry out the purposes of the conspiracy.

If you find there was such an agreement beyond a reasonable doubt, then that satisfies the first element of Count 1.

Now, the second element -- let me add one

other word. The allegations of conspiracy that I read from the indictment use many of the same terms I use with the substantive offense, that is, extortionate means and extension of credit, and those terms have the same meaning as to Count 1 and Count 2.

I should point out, though, that in connection with this conspiracy count, Count 1, the government alleges that the only extension of credit involves the debt of approximately $4,000 alleged to be owed by Dwyer to Gianotti as a result of wagering losses.

Now, in this case, the government alleges that the conspiracy was formed between Mase and Gianotti on or about the dates alleged. Since a person cannot be guilty of conspiring with himself, you cannot find that there was a conspiracy unless you find that both Mase and Gianotti formed the conspiracy and that both became members of it.

The second element in Count 1 requires that the defendant Mase knowingly and wilfully became a member of the conspiracy. That means that Mase must be shown to have become a member of the conspiracy, to have known what its objectives were and to have intended to advance those objectives. It is not necessary to show that the objectives of the conspiracy were actually accomplished. It is sufficient if each of the elements of Count 1, as I have listed them for you, are established beyond a reasonable doubt.

In considering whether the conspiracy alleged in Count 1 was formed and existing, you're entitled to cosider not only what Mase said, but also what Gianotti said to Dwyer in furtherance of the objectives of the conspiracy. If you find that Gianotti made threats of personal violence to Dwyer in furtherance of a conspiracy between Gianotti and Mase, you can consider that evidence in determining whether the conspiracy charged in Count 1 was formed, but in deciding whether Mase became a knowing and wilful member of the conspiracy, you must consider only what Mase himself said or did.

In regard to the evidence of what Gianotti may have said, I caution you with respect to the tape of what Gianotti is alleged to have said in the phone call received at Dwyer's home. As I told you yesterday, that evidence of what Gianotti said in the phone call on June 22nd is to be considered by you only as evidence with respect to Count 1 and not Count 2.

In considering that conversation on Count 1, the conspiracy count, you can consider only whatever words you may find constitute a threat, express or implied, that physical violence would be used to collect or attempt to collect an extension of credit that had already been made. You cannot consider any part of that conversation as evidence that there already was an extension of credit or as evidence of

the truth of any facts. Whether or not you find that there was an extension of credit depends entirely on the conclusions you reach from what Paul Dwyer told you about his dealings with Gianotti.

Furthermore, if you find that there was an extension of credit existing during the period of the conspiracy, the Gianotti conversation can be considered only to the extent that it contains words that you find constitute a threat, express or implied, to use violence to collect or attempt to collect that existing extension of credit and not any future extension of credit that might later be made.

There is some language on that tape that refers to terms of a future loan that might have been made in substitution of the debts Dwyer says he already owed, and there is some reference to what would happen if Dwyer did not pay, according to the terms of such a substituted debt, but I instruct you that the only conspiracy charged in Count 1 is a conspiracy to participate in the use of extortionate means to collect or attempt to collect debts already owed by Dwyer to Gianotti and not debts that might arise in the future. That is the only conspiracy charged and if you are not persuaded beyond a reasonable doubt that Mase has been proven guilty of that conspiracy offense, then he must be acquitted on Count 1. The third element of this offense is that at least one member of the conspiracy committed at least one overt act in

furtherance of the conspiracy. An overt act simply means any act knowingly committed by one of the conspirators in an effort to accomplish the objective of the conspiracy. The overt act need not itself be criminal in nature. It must, however, be some act that tends towards accomplishment of the purpose of the conspiracy charged in the indictment.

In this case, for example, the government contends that Mase and Gianotti met Dwyer in the back room of a roadside restaurant, had a conversation with him in which threats were made. If you find that occurred, that would suffice as an overt act. The point is that the offense in Count 1 to be established -- that for the offense in Count 1 to be established, it is not necessary that the conspiracy alleged have succeeded in accomplishing its purpose, but more must be shown than simply the existence of the conspiracy. At least one overt act must have been taken by one of the conspirators in furtherance of the conspiracy in an effort to accomplish its objective.

As to the fourth element that the defendant be shown to have acted wilfully and with specific intent, I previously explained the term wilfully. To act with specific intent means knowingly to do an act which the law forbids purposefully intending to violate the law.

So as I mentioned before, you have two counts, Count 1, the conspiracy count; Count 2, the substantive count.

Give separate consideration to each because, as I have indicated, their elements are somewhat different and in some instances different evidence applies to them.

In conclusion, let me remind you that you are the finders of the facts, and you are oathbound to apply the law, as I've explained it to you, and apply it to the facts as you determine them to be.

When you reach the jury room, select one of your number as foreman or forelady to preside over your deliberations, determine the facts on the basis of the evidence, apply the law as I have explained it, and then return your verdicts fairly, uprightly, and without a scintilla of prejudice.

When you reach a verdict as to either count, it must be unanimous. It is the duty of each juror to discuss and consider the opinions of each of the other jurors. Despite that, in the last analysis, it is your individual duty to make up your own mind and decide the case on the basis of your own individual judgment and conscience.

When you reach the jury room, you can proceed to select a foreman or forelady. I'll ask you to wait just a moment until the clerk brings you the indictment and the exhibits, and then proceed to your deliberations, and when you have reached verdicts, let us know through the bailiff and return to court and announce your verdicts.

All right. The jury may be excused.

(Whereupon, the jury left the courtroom.)

THE COURT: All right. Does the government have any exceptions or further requests to charge?

MR. COFFEY: No, your Honor.

THE COURT: Does the defendant?

MR. ZELDES: Yes, your Honor.

I object to the Court not giving the written instructions that we submitted and, more specifically, some of them obviously were covered in the general approach, and I object insofar as it differed from our requests, but more specifically, I don't think your Honor covered defendant Mase's request to charge No. 4, even in generality, and I'm not sure whether you intended to omit that or not. I think we're entitled to that.

THE COURT: Wait a minute. Let's see what it is. All right.

MR. ZELDES: With respect to the presumption of innocence, I renew our request. I understand your Honor intended not to use that language, but I do object to you not using our language concerning the hypotheses quoted therein. I object to not giving our No. 12, which is the federal nexus, which I understand you did not intend to give, but I do object, and I object very strongly, if I may, your Honor, to what we feel -- what the defense feels amounts to a directed

verdict in connection with the definition of an extension of credit.

I understand that you are not and did not state, as a matter of law, that these were not loans, and I don't abandon that claim, but I understand that, but what I think is very unfair and extremely prejudicial is that you said that a gambling debt, if they find a gambling debt, they can find an extension of credit without saying that they first must determine that that's either a loan or an agreement for deferring payment, and that unless the gambling debt constitutes either a loan or agreement for deferring payment, cannot be an extension of credit. The way you framed it, your Honor, it seems to me an absolute equation of a gambling debt to an extension of credit, and I believe in one point, if I heard you correctly, you said that the gambling debt or extension of credit as if they were absolutely synonymous and I think that amounts to a directed verdict.

That's extremely prejudicial to the accused, even assuming your Honor's position on the loan aspect, which we don't concede, but which we understand your Honor has clearly rejected, and it seems totally unclear to say to this jury if you find a gambling debt, you can find an extension of credit without saying that a gambling debt in itself is not an extension of credit.

You must first determine that it either

constitutes a loan or an agreement for deferring payment, and until you do that, you cannot find that there's been an extension of credit.

It's grossly prejudicial, particularly in view of the nature of the defense.

I believe you told us, and I may, in advance, your Honor, that you were going to advise the jury that if the jury found that the Papagoda debt had been extinguished, it couldn't -- the Papagoda $985 gambling debt had been extinguished, it couldn't constitute a debt or an extension of credit, and I don't think you mentioned that.

THE COURT: I told them your claim in that regard.

MR. ZELDES: Yes, but I understood our colloquy earlier that you were going to advise them that if they found that the Papagoda debt had been extinguished, then they could not use the Papagoda gambling debt or the Papagoda nident at all as constituting an extension of credit, and, if your Honor please, with respect to the conspiracy, I object to the fact that the Court didn't point out, I believe, that there had to in fact bE an extension of credit before there could be a finding of guilty.

In other words, you said you don't have to carry out the whole substantive crime to be guilty of conspiracy. That may be true, but there does have to be an

extension of fact. If two people agree to use threats to collect something that is not in fact an extension of credit, no matter what they thought. It can't constitute the crime as alleged, and I think that your charge in that respect was misleading.

I think I just mentioned, if I didn't, I'll repeat myself, that at one point in Count 2 you used the word or between debt and extension of credit as to indicate an exact equation and to the extent that your Honor's charge goes along that theme it's our contention that it's directing a verdict against us in violation of the Constitution.

May I have just a moment, your Honor?

THE COURT: I hope you proceed because you know they're waiting, and if you have anything else, I'd like to know about it so I can bring them right back and tell them.

MR. ZELDES: The only other thing I would state, if your Honor please, your Honor told them to go in and start deliberating and I think that the standard charge on that --

THE COURT: I told them to select a foreman or forelady and wait until the clerk brought the exhibits. That's why I'm anxious to proceed, so their waiting doesn't tax their patience.

MR. ZELDES: The only thing I add to that is

that they not be permitted to deliberate during their eating of the lunch; that this requires their undivided attention.

THE COURT: I don't know of any authority that says a jury locked up together, that they cannot discuss a case while they are eating lunch.

MR. ZELDES: I so request it, your Honor.

THE COURT: Anything else?

MR. ZELDES: No. That's all.

MR. COFFEY: Your Honor, one question I have with respect to the tapes. How does the Court want to handle the custody of the tapes? If the jury wants to hear it, bring them out or send the tapes in with them?

THE COURT: Let's see if that problem arises.

MR. ZELDES: Did you, your Honor, rule on any of my motions?

THE COURT: I'll give them some further instructions and that will be the ruling.

MR. ZELDES: Thank you.

(Whereupon, the jury entered the courtroom.)

THE COURT: All right.

Ladies and gentlemen, let me just add one or two other instructions that are not to be given any greater or lesser weight because they come at this point, rather than during the body of the charge.

As I told you before, take the instructions as a whole.

I referred at one point to the government's claim that there was an extension of credit with respect to wagering losses of Mr. Dwyer's with respect to Mr. Papagoda. That was the amount that is alleged to be about $985 and I think I mentioned to you the defendant's claim that that debt was forgiven. I simply want to make it clear to you that if you are not persuaded that that gambling debt was existing, that is, you don't have to find it was extinguished.

The burden is on the government to show it existed. If you are not persuaded beyond a reasonable doubt that that transaction gave rise to an existing extension of credit at the time that this defendant is alleged to have used or participated in the use of extortionate means, then you would not be able to find that that transaction satisfied the statutory test of an extension of credit.

As I mentioned before, you don't have to find that both that transaction and the Gianotti transaction existed. Either one is sufficient, and in connection with that phrase, extension of credit, I explained, I read you the statutory definition, and I think I explained to you that there are two ways that a transaction can be an extension of credit; either a loan or, without reading all of the statute, an agreement to defer repayment of a debt, and I told you if

you find that Mr. Dwyer incurred wagering losses, let's say, to Mr. Gianotti, as an example, you'd be entitled to find that either a loan or an agreement to defer repayment of a debt, that is, an extension of credit, by one of those two terms, arose within the meaning of the statute.

Whether you conclude that is up to you. The statutory definition provides those two ways for an extension of credit to arise, either by a loan or by an agreement to defer repayment of a debt and the factual issue is for you, whether or not, based on the facts as you find them to be, either of those statutory definitions of an extension of credit was existing at the time that extortionate means were used to attempt to collect such extensions of credit.

Finally, let me add one other thing. I think I mentioned to you when I first told you what the charges were, that these were the only charges for you to consider, the charges contained in Count 1 and Count 2, and I simply want to emphasize that you're not to be concerned with any other aspects of Mr. Mase's conduct. There's some reference to gambling. He's not on trial for gambling. There are very specific charges here and the only charges you are to consider are the ones in Count 1 and Count 2.

If you think he is proven guilty beyond a reasonable doubt of all the elements of those charges, you should find him guilty of those counts. If you have a

reasonable doubt as to either count, then you should find him not guilty as to that count. If you have a reasonable doubt as to both counts, you should find him not guilty of both counts, but the point is those are the only two charges that are for your consideration in this case.

All right, you may resume your deliberations.

(The jury left the courtroom.)

THE COURT: All right. Do you have exceptions to that, Mr. Zeldes?

MR. ZELDES: If your Honor please, only this: When your Honor -- I'm not waiving the earlier claim concerning the loans, but I'm not going to discuss that now since your Honor has ruled.

When your Honor said you are entitled to consider that the debt -- the gambling debts constitute either a loan or an agreement to repay, whether you do is up to you, words to that effect, I think for that to be fair, it should have said, however, you must find that an extension of credit exists and that merely finding a gambling debt is not sufficient.

THE COURT: Well, I just don't think the law or the logic chops it quite that fine. I think I've given you, frankly, far more than is sensible as an interpretation of the statute, and I'm not going to try to define it more than that.

MR. ZELDES: The only point I should take exception to is when vou corrected the point about Papagoda's debt, and the extinguishment of Papagoda's debt. You said, I think, one is sufficient and at that time there was no reference solely to Count 2, and that may be misleading.

THE COURT: Well, as you know, it's impossible in discussing any point in a charge, to constantly link it up with every other point. I told them several times to consider the instructions as a whole. That point was made explicitly and it's just impossible to deal with it in the way your last point suggestion is, so I won't recharge on that.

Anything else?

MR. ZELDES: No.

THE COURT: We'll be in recess until two o'clock.

(Luncheon recess.)

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JUDGMENT AND COMMITMENT (Rev. 2-68) Cr. Form No. 25

United States District Court

FOR THE

DISTRICT OF CONNECTICUT

'CROFILM DEC 16 1976 'EW HAVEN

United States of America

v.

EDWARD V. MASE

No. N-76-91 Criminal

FILED
DEC 14 4:31 PM '76
U.S. DISTRICT COURT
NEW HAVEN, CONN.

On this 14th day of December, 1976 came the attorney for the government and the defendant appeared in person and [1] by counsel

IT IS ADJUDGED that the defendant upon his plea of [2] not guilty and the jury having returned a verdict of guilty as to Count Two has been convicted of the offense of violation of Title 18, Section 894, of the United States Code (wilfully and knowingly participated in the use of an extortionate means to collect an extention of credit)

as charged in Count Two, and mistrial having been declared as to Count One

~~was convicted~~ charged

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of [4] ten (10) years on Count Two.

~~XXXXXXXXXXXXXXXXXX~~

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

United States District Judge.

The Court recommends commitment to [6] a facility within the District of Connecticut until the ~~conclusion~~ submission of the defendant's appeal.

Clerk.

[1] Insert "by [name of counsel], counsel" or "without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel." [2] Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be. [3] Insert "in count(s) number " if required [4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law. [5] Enter any order with respect to suspension and probation. [6] For use of Court to recommend a particular institution.